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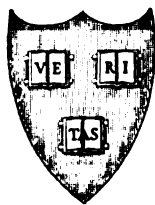
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CONTENTS OF VOLUME FOURTEEN

	PAGE
THE ORIGIN, MEANING AND INTERNATIONAL FORCE OF THE MONROE DOCTRINE. <i>Charlemagne Tower</i>	1
THE SANCTION OF INTERNATIONAL LAW. <i>Ronald F. Rosburgh</i>	26
THE SETTLEMENT OF INTER-STATE DISPUTES. <i>Robert Granville Caldwell</i> ...	38
PUNISHMENT OF OFFENDERS AGAINST THE LAWS AND CUSTOMS OF WAR. <i>James W. Garner</i>	70
COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR AND ON ENFORCEMENT OF PENALTIES. <i>Report</i>	95
THE TREATY OF PEACE WITH GERMANY IN THE UNITED STATES SENATE. <i>George A. Finch</i>	155
THE NEUTRALITY OF CHILE DURING THE EUROPEAN WAR. <i>Beltran Mathieu</i> ..	319
THE PAN-AMERICAN FINANCIAL CONFERENCES AND THE INTER-AMERICAN HIGH COMMISSION. <i>John Bassett Moore</i>	343
THE DECLARATION OF PARIS. <i>Charles H. Stockton</i>	356
INTERNATIONAL AERIAL NAVIGATION AND THE PEACE CONFERENCE. <i>Arthur K. Kuhn</i>	369
NOTES ON THE RECOGNITION OF DE FACTO GOVERNMENTS BY EUROPEAN STATES. <i>Amos S. Hershey</i>	499
THE POWER OF RECOGNITION. <i>Clarence A. Berdahl</i>	519
THE DOCTRINE OF THE EQUALITY OF NATIONS IN INTERNATIONAL LAW AND THE RELATION OF THE DOCTRINE TO THE TREATY OF VERSAILLES. <i>S. W. Armstrong</i>	540
THE UNDERSTANDINGS OF INTERNATIONAL LAW. <i>Quincy Wright</i>	565
EDITORIAL COMMENT:	
The Monroe Doctrine and the League of Nations. <i>Philip Marshall Brown</i>	207
The International Red Cross Organization. <i>Chandler P. Anderson</i>	210
The meeting of the American Bar Association. <i>Charles Noble Gregory</i> .	214
Jurisdiction of local courts to try enemy persons for war crimes. <i>George A. Finch</i>	218
Thomas Joseph Lawrence—In Memoriam. <i>James Brown Scott</i>	223
Professor Oppenheim. <i>Charles Noble Gregory</i>	229
The solution of the Spitsbergen Question. <i>Fred K. Nielsen</i>	232
Self-determination in Central Europe. <i>Philip Marshall Brown</i>	235
Postponement of the Annual Meeting. <i>Elihu Root</i>	382
Changes in the JOURNAL. <i>James Brown Scott</i>	382
United States Congressional Peace Resolution. <i>Chandler P. Anderson</i>	384
The Permanent Court of International Justice. <i>David Jayne Hill</i>	387
The rights of minorities under the treaty with Poland. <i>Theodore S. Woolsey</i>	392

	PAGE
The mandate over Armenia. <i>Philip M. Brown</i>	396
The extension of Congressional jurisdiction by the treaty-making power. <i>Chandler P. Anderson</i>	400
In Memoriam—Robert Bacon. <i>James Brown Scott</i>	403
A Permanent Court of International Justice. <i>James Brown Scott</i>	581
Honorable Elihu Root's London address on Abraham Lincoln. <i>James Brown Scott</i>	590
The Institute of International Law. <i>James Brown Scott</i>	595
American solidarity. <i>James Brown Scott</i>	598
Two new journals of international law. <i>James Brown Scott</i>	606
Heinrich Lammasch (1853-1920). <i>James Brown Scott</i>	609
Alpheus Henry Snow (1859-1920). <i>James Brown Scott</i>	613
CURRENT NOTES:	
Commentary on the League of Nations Covenant	407
Joint Resolution declaring the War at an end	419
The work of the League of Nations. <i>George A. Finch</i>	620
CHRONICLE OF INTERNATIONAL EVENTS. <i>Kathryn Sellers and M. Alice Mattheus</i>	240, 421, 640
PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW. <i>George A. Finch</i> ..	252 450, 660
JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW:	
<i>Supreme Court of the United States:</i>	
Arkansas v. Mississippi	260
Missouri v. R. P. Holland	459
<i>Judicial Committee of the Privy Council:</i>	
The Proton	264
The Hamborn	269
The Noordam and other vessels (Part Cargoes ex)	665
The Dusseldorf	672
<i>British Court of Appeal:</i>	
The Porto Alexandre	273
Markwald v. Attorney-General	276
BOOK REVIEWS:	
Laski: Studies in the Problem of Sovereignty	283
Chong Su See: The Foreign Trade of China	286
Sayre: Experiments in International Administration	287
van Eysinga: Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813	290
Verzijl: Het prijarecht tegenover neutralen in den wereldoorlog van 1914 en volgende jaren	291
Smith: The War with Mexico	293
Falcke: Le Blocus Pacifique	298
Fried: Mein Kriegs-Tagebuch. Volume II	299
Scott: The Recommendations of Habana Concerning International Or- ganization	301
Institut Américain de Droit International. Acte Final de la Session de la Havane. Résolutions et Projets	304
Suárez: Tratado de las Leyes y de Dios Legislador	307
Hill: Present Problems in Foreign Policy	464
Foulke: A Treatise on International Law	469
Culbertson: Commercial Policy in War Time and After	473
Laski: Authority in the Modern State	475
Ogilvie: International Waterways	478
National Civil Service Reform League: Report on the foreign service....	480
Lange: Histoire de l'Internationalisme	483

CONTENTS

V

	PAGE
Strupp: La situation internationale de la Grece	486
Haskins and Lord: Some Problems of the Peace Conference	679
Scott: Judicial Settlement of Controversies between States of the American Union	682
Molhuysen, Grotius: De Iure Belli ac Pacis	692
Walston: The English Speaking Brotherhood and the League of Nations..	693
Hall: The Monroe Doctrine and the Great War	696
Suárez: Diplomacia Universitaria Americana	697
Brissot: Bolivia ante la Liga de las Naciones	700
Quigley: The Immunity of Private Property from Capture at Sea	700
PERIODICAL LITERATURE OF INTERNATIONAL LAW. <i>Kathryn Sellers</i> and <i>George A. Finch</i>	313, 490
OFFICIAL DOCUMENTS (Separately paged and indexed)	

THE ORIGIN, MEANING AND INTERNATIONAL FORCE OF THE MONROE DOCTRINE

By CHARLEMAGNE TOWER, LL.D.

*Former American Ambassador, President of The Historical
Society of Pennsylvania*

I BEG leave to present in this article for consideration, a few of the characteristic details of what we know, and what has come during the past century to be known generally in the international and political world, as the Monroe Doctrine. I would point out its origin, its meaning, its development with the extension and growing importance of American national influence throughout the nineteenth century, and the importance of its bearing upon the American national life of our day—as well as its compelling power in every great movement of political weight that has taken place in the course of our dealings with foreign nations since the establishment of the Government of the United States. Its ground principle is laid in the deeply-rooted sentiment of the people of this country, upon which the fabric of personal intellectual and political independence from all the rest of the world is built up; for it has for its object the safeguarding and defence of the essential qualities of American freedom. It began to make itself felt at the moment when American freedom came into existence and separated the people of this continent from those who still lived in the old world. The truth is, that at the end of the eighteenth century a revolution had taken place which had not only the result of taking away from Great Britain her North American colonies, but, what was of equal importance in the subsequent development of political relations between sovereign states,—a revolution had taken place in the minds of men. The feudal traditions of government which had obtained for a thousand years, carrying with them the accepted formulæ of supremacy and control, on the one hand, and the obligation of obedience, with the duty of submission, on the other, were intentionally removed from the plan of life and from the rule of conduct of men in America.

It was so great a departure from the recognized precedent of the time that it seemed a contradiction in Europe. Indeed, when de Tocqueville came to this country, more than half a century after the Declaration of Independence, his chief task was to explain to his own compatriots (what was then inconceivable in France and on the European Continent), the methods and processes of a government in which the people ruled by their own spontaneous initiative and took the leading part themselves in the direction of their own affairs.

It was at this point of distinction between the ideas of government on the part of the monarchies of Europe and those that had sprung up in the midst of the new and independent nationality established upon this side of the ocean, that the peoples of the two continents began to draw apart. It is true that their intercourse was not disturbed; in fact it increased with the increasing importance of the commerce and trade which advanced with the growth of the industries and the opening of the channels of productive development in the United States. Friendly relations could exist, as has been seen many times before in the course of the world, even between peoples whose ethical sentiments, whose religious beliefs, were opposed and whose essential characteristics or racial qualities were unlike.

But the widening distance between the principles of government and political thought on the one continent and the other led at length to the breaking of the ancient connection, and had as a result the strengthening of the radical differences between the aims and aspirations of American and European civilizations. The ideals of liberty and independence in this country produced a sentiment of suspicion and distrust of anything that pertained to the ancient monarchy, an insuperable opposition to the contact or influence of its bearing upon government and life. For it came to be, throughout the United States, a prime element of public sentiment and national faith, that monarchy in any form and democratic principles cannot live together on American ground. Politically, there must be a complete non-intercourse.

"I will buy with you, sell with you, talk with you, walk with you,
and so following;

"But I will not eat with you, drink with you, nor pray with you."

Nor could there be any concession on the part of such earnest and determined men as the patriots who had shed their blood and risked their lives in the struggle for American independence. That having been won finally and definitely accomplished, and the democracy of America firmly rooted in the soil, there could be no submission of the national will,—the will of the people themselves.

Their experience as well as their judgment derived from the movements of other nations and from what was then going on in the world, led them to the conviction that monarchical principles would always be a menace to democratic ideas and institutions, that the increasing power of the one must certainly lead to the restraint, if not the actual downfall, of the other.

It was evident, however, that no immediately threatening danger was to be anticipated from the old and long established monarchical countries of Europe, from which they were so widely separated by the Atlantic lying between. But the national mind was exceedingly sensitive lest some of the European governments should undertake to extend their influences to this side of the ocean. The young and vigorous nation, conscious of its growing strength, determined that this must not be. It declared to the world that no extension of influence to this continent by any European government, and no acquisition of territory, either in North or South America, could be tolerated by the United States. This was the Monroe Doctrine.

It was the worthy part of a free and enlightened nation, General Washington said, to give mankind the example of a people always guided by an exalted justice and benevolence. Though he earnestly besought them to beware of the dangers that surrounded his fellow-countrymen; declaring that a free people ought *constantly* to be awake, since experience as well as history have proved that foreign influence is one of the most baneful foes of republican government. What Washington said to them by way of advice in taking leave of the country in his Farewell Address is an evidence of the unerring judgment with which he and his colleagues weighed and considered the political questions of their day; throwing into the balance the elements of human character the world over, and the weight of those qualities of men which never change. His voice as it comes to us

through that Address is almost prophetic in solemn admonition as to dangers to the country that beset it even now.

"The great rule of conduct for us, in regard to foreign nations," said he, "is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled in perfect good faith. Here let us stop."

"Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities."

Apprehension began to be felt at Washington soon after the opening of the new century in regard to the situation of the Island of Cuba, which, it was understood through late reports from Europe, had become the object of aggressive intentions upon the part of Great Britain, either with the object of taking possession of it herself for her own advantage, or in order to prevent it from falling into the hands of the French who were also believed to have cast a jealous eye in that direction. It was even asserted that the British Government had been for a long time in secret negotiation with Spain for the cession of the island, and that both France and Great Britain had political agents there observing the course of events and endeavoring to shape their direction.¹

But the events which caused serious alarm to the statesmen of this country arose a little later out of the political troubles between Spain and her colonies, in the course of a revolutionary movement spreading itself rapidly throughout Central and South America upon which followed the separation from the mother country, in quick succession, of Mexico, Venezuela, Peru, Chile and the Republic of Buenos Aires,—a revolt at the same time against the sovereignty of

¹ Mr. Adams, Secretary of State, to Mr. Forsyth, Minister to Spain, 17 December, 1822.

the Spanish King and a refusal by the people of these American countries to submit, then or in the future, to European control.

A great disturbance was caused in consequence also upon the continent of Europe by the breaking away of so large a number of Spanish subjects from their natural allegiance to their sovereign; which, to many conservative minds appeared to be not only a flagrant disregard of right, but a total destruction of order and of law. The refusal to obey was looked upon, of course, as an act of rebellion that should not be tolerated; for if persisted in and allowed to strengthen the avowed purpose of maintaining their independence and of governing themselves, the example of these Spanish colonies would threaten the existence of monarchy itself, and cause also the very serious loss that must naturally follow the abolishment of the regulation and control then enjoyed by the central government over the commerce and trade of the colonies.

It was found upon inquiry through diplomatic channels that there was a conviction amongst the political leaders on the Continent, that steps should be taken immediately for mutual protection. The Emperors of Austria and Russia and the King of Prussia sent their delegates accordingly to a convention at Paris, in the year 1815, at which a treaty was concluded between these sovereigns, which was adhered to subsequently by the King of France, the object of which was declared to be the administration of government, in both foreign and domestic affairs, according to the precepts of justice, charity and peace. They declared that they looked upon themselves as delegated by Providence to rule over their respective peoples, and they agreed to lend one another, on every occasion and in every place, assistance, aid and support. This league is what has become famous in the history of the nineteenth century as the Holy Alliance. Its purpose became, shortly after its establishment, the maintenance of the principle of legitimacy,—the divine right of kings as opposed to the rights of the people—against the growing ideas of political independence and the extension of liberal thought.

Taking into consideration the resources of wealth and power that this league controlled and disposed of amongst the enlightened nations of Europe at that time, it was unquestionably the most formid-

able attempt made in modern days by united action to stem the tide of advancing political development. But it sought to bolster up foundations that were no longer secure, to invigorate a system already weakened by repeated assaults, and to refresh ancient institutions from which their vitality was fast slipping away. It does not concern us now to inquire what likelihood there was that this object could have been attained, even momentarily, if the plan had been fully carried out, or whether the colonists of Spain could then have been held for a considerable time even if the allied monarchs had succeeded for the moment in reducing them to their former subjection.

An immense impulse had been given to independent thought throughout Europe by the establishment of liberty in the United States, and its effect was beginning to show itself in the national feeling both in Great Britain and on the Continent. Besides this, the public mind of England had long been opening the way for that brilliant advance which characterized the Victorian era; whilst in France the influence of Voltaire and Rousseau, Montesquieu and d'Alembert had extended itself for a generation amongst intellectual people and been at work breaking down the barriers of old restraints and ancient prejudices. Inevitably, the world would have advanced over every obstacle and followed its course, in the long run, no matter what had been done at that time to hinder or delay it.

At all events, the Holy Alliance declared formally that they had "an undoubted right to take a hostile attitude toward those states in which the overthrow of the government might serve as an example to others; that revolt is crime, and that any pretended reform effected by revolt and open force was null and void and forbidden by the public laws of Europe."

They issued a proclamation also in which they announced their determination to suppress the spirit of rebellion wherever it might show itself, and declared by treaty amongst themselves that they would put an end to representative government and destroy the liberty of the press. Although this procedure was not primarily intended to affect the people of North America in their domestic affairs, nor did our interests become involved in it until later, and then indirectly through the quarrels of Spain, yet, so open and general

a declaration of war upon the claims of liberty and free government was in principle a direct challenge to the United States. It made in the end a lasting impression upon the sentiment of this country which has long outlived the political causes that gave rise to it; and in fixing forever their national determination to resist the encroachments of autocratic government upon this side of the ocean, it did more to strengthen the national feeling of the American people than any incident in public life up to the time of the Civil War.

In the meantime, however, a step was made in the direction of the enforcement of the purposes of the allies, who had now become known as "The League of Peace," by the Government of France which sent a military expedition into Spain, in the early part of the year 1823, to restore the absolute Spanish King, Ferdinand VII, to his throne, from which he had been displaced by an insurrectionary outbreak in that country; and the French had been so successful in their undertaking during the course of that summer that they gave notice officially to the British Government that as soon as they had completed the campaign which they then had in hand, they intended to consider the subject of putting an end to the revolutionary movements in South America and of restoring the revolted colonies to Spain.

Great Britain had not joined with the Continental governments in the formation of the Holy Alliance and the League of Peace, because, in the first place, her own established monarchy was founded upon a revolution, and the sentiment of her people would certainly not approve of the attitude which the British Cabinet must necessarily assume if it united with the Continental ministries in maintaining that revolt is crime; and, in the second place, British commercial interests were seriously involved, because, since the rupture of Spanish control through the independence of the colonies, British trade had very greatly increased with South America, as had also the trade and commerce of the United States. This new and flourishing trade relation Great Britain was naturally desirous to retain. She had not recognized the South Americans as the United States had done, and her position was this: that she did not wish to see the colonies returned to their former allegiance to Spain, for in that case British

trade would lose its privileges, which might be granted by the Spanish Government as a compensation to France; or, if through the outbreak of active hostilities between the allies of the League and the South American states a commercial non-intercourse should result between those states and the European Continent, as had been threatened,—then the rich trade opportunities in South America would fall to the advantage of the United States. So that the British attitude,—which was, of course, one of self-interest,—was not comfortable in any event; and it became necessary, in view of the importance of the questions involved, to adopt some policy, a policy which, all things considered, might seem most promising for the future of British commercial wealth.

Under these circumstances, and at this point, it was decided by the British Cabinet to seek the aid of the Government of the United States; whereupon Mr. Rush, the United States Minister in London, notified the Department in Washington that he had been approached by Mr. Canning at the British Foreign Office as to the possibility of a joint declaration by the two governments against the intervention of the allies in Spanish America.

Mr. Rush's despatch, dated August, 1823, to Mr. Adams, Secretary of State, informed him that he had just had an interview with Mr. Canning during which the subject of the military progress in Spain had entered into the conversation and that he had remarked to Mr. Canning that it was generally understood that, even if France should succeed entirely with her enterprise on the Spanish Peninsula in which she was then engaged, Great Britain would not allow her to go further and lay her hands upon the Spanish colonies, bringing them also under her grasp. Mr. Rush having in mind, as he said, an official note of the British Government despatched to its ambassador in Paris a few months before, during the negotiations which preceded the invasion of Spain, in which the declaration was made that, whilst the course of events appeared to have decided substantially the question of the separation of those colonies from the mother country, the King of Great Britain disclaimed any intention of appropriating to himself the smallest portion of the Spanish possessions in America, and he was satisfied that no attempt would be

made by France to bring them under her dominion; that is to say, that Great Britain would not be passive under such an attempt by France.

In reply to this observation, Mr. Canning asked what Mr. Rush thought that the United States Government would say to going hand in hand with England in the same sentiment; not that any concerted action between the two countries would become necessary, but that the simple fact of their being known to hold the same opinion would, by its moral effect, counteract any such intention on the part of France.

Mr. Canning added that he believed this because of the large part of the maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge that they had a common agreement upon a question of such wide maritime interest could not fail to produce upon the rest of the world.

It is a case that has so frequently reappeared in the history of the world, in which a community of interest has arisen between governments out of two entirely separate motive influences which react upon the relations between the one and the other, among themselves, to produce a new and mutually beneficial relation in their common dealings with a third nation. The basis upon which international alliances are built up is frequently of this character; for it often happens that the political aims and objects the attainment of which is the prime inducement to the parties to an alliance to enter into it, are of the most widely different nature and origin, though united under given circumstances in an effort to lead to a result sought after and wished for by all.

Mr. Canning undoubtedly knew that it was not so much the question of commerce and trade or the control of the shipping of South America,—which was paramount at that moment as the motive policy of Great Britain,—that was likely to arouse public sentiment in the United States against the movements of the League of Peace. But he was quite aware also that, although the American Government had no disposition to interfere between Spain and her colonies, but would remain neutral toward the efforts of the mother country to

subject them to their former allegiance, yet the people of this country would look with extreme disapproval upon any enterprise which had in view the extension of the political influence or military control on South American territory of any European sovereign as arranged for by the terms of the Holy Alliance.

To forestall that purpose of the allies by bringing to bear the combined moral influence at least of the United States and Great Britain, would serve, as he anticipated, to keep France out of South America in any event. That would be enough; it was what he sought.

The conversation with Mr. Rush had evidently led to an unexpected and somewhat free interchange of ideas upon the subject which at that moment was, no doubt, generally prominent in the minds of leading statesmen in England in view of the latest news from Spain and the recent despatches from the Continent. Canning, upon whom the responsibility rested to take some step toward safeguarding the British interests involved, appears to have decided, upon reflection after his interview with the American Minister, that the most effective procedure as well as the most available from the nature of the case would be to join his forces with those of the United States. The chances are that he had already had this in contemplation for some time. At all events, he wrote a letter to Mr. Rush, a few days later, which he marked "private and confidential," in which he said:^a

Before leaving town I am desirous of bringing before you in a more distinct, but still in an unofficial and confidential shape, the question which we shortly discussed the last time that I had the pleasure of seeing you.

Is not the moment come when our governments might understand each other as to the Spanish-American colonies? And if we can arrive at such an understanding, would it not be expedient for ourselves, and beneficial for all the world, that the principles of it should be clearly settled and plainly avowed?

For ourselves we have no disguise.

1. We conceive the recovery of the colonies by Spain to be hopeless.
2. We conceive the question of the recognition of them, as independent states, to be one of time and circumstances.
3. We are, however, by no means disposed to throw any impediment in the way of an arrangement between them and the mother country by amicable negotiation.

^a Mr. Canning, British Foreign Secretary, to Mr. Rush, 20 August, 1823.

4. We aim not at the possession of any portion of them ourselves.
5. We could not see any portion of them transferred to any other Power with indifference.

If these opinions and feelings are, as I firmly believe them to be, common to your government with ours, why should we hesitate mutually to confide them to each other, and to declare them in the face of the world?

If there be any European Power which cherishes other projects, which looks to a forcible enterprise for reducing the colonies to subjugation, on the behalf or in the name of Spain, or which meditates the acquisition of any part of them to itself, by cession or by conquest, such a declaration on the part of your government and ours would be at once the most effectual and the least offensive mode of intimating our joint disapprobation of such projects.

.

Do you conceive that, under the power which you have recently received, you are authorized to enter into negotiation, and to sign any convention upon this subject? Do you conceive, if that be not within your competence, you could exchange with me ministerial notes upon it?

Nothing could be more gratifying to me than to join with you in such a work, and I am persuaded there has seldom, in the history of the world, occurred an opportunity when so small an effort of two friendly governments might produce so unequivocal a good, and prevent such extensive calamities.

Mr. Rush had not, of course, authority as minister to enter into negotiations of this character in regard to a subject of the greatest importance to his own government; for, whatever may have been the discussions of the European situation at home or in his correspondence with America, it is not likely that anyone at that moment could have foreseen so portentous an event in American affairs as the suggestion of what was substantially an alliance, as contained in Mr. Canning's letter.

The principal statesmen whose opinions were valued at home still remembered the American Revolution, and it was but about ten years since the United States and Great Britain had been at war.

Nothing in Mr. Rush's instructions, therefore, could enable him to act of his own motion at that distance from the sources of his official authority; consequently he replied to Mr. Canning that he would submit the case to the consideration of his own government

at Washington, which was what he did, by sending an account of the informal conversation at the British Foreign office and a copy of Mr. Canning's proposal, to Mr. Adams, as Secretary of State.

The receipt of this correspondence produced a profound impression in the United States. After reading and considering it, President Monroe sent Mr. Rush's despatches to Mr. Jefferson, then in Virginia, to obtain his opinion, asking him to send them on to Mr. Madison in order that he might have his judgment upon them also.³

"Many important considerations are involved in this proposition," he said:

1st. Shall we entangle ourselves, at all, in European politics and wars, on the side of any Power, against others, presuming that a concert by agreement, of the kind proposed, may lead to that result?
2nd. If a case can exist, in which a sound maxim may and ought to be departed from, is not the present instance precisely that case?
3rd. Has not the epoch arrived when Great Britain must take her stand either on the side of the monarchs of Europe or of the United States, and, in consequence, either in favor of despotism or of liberty, and may it not be presumed that, aware of that necessity, her government has seized on the present occurrence as that which it deems the most suitable to announce and mark the commencement of that career?

He added that his own impression was, that the United States ought to meet the proposal of the British Government and make it known that we should view an interference on the part of the European Powers, and especially an attack on the colonies, as an attack on ourselves,—presuming that if they succeeded with them they would extend it to us. "I am sensible, however," said he, "of the extent and difficulty of the question and shall be happy to have yours and Mr. Madison's opinions on it."

There is a peculiar interest in the interchange of opinions thus given out by three of the leading men of America at that time, each of whom in turn had been President, upon this question of vital import presented to them under circumstances which lent to their judgment something of the solemn impressiveness of a decision made by a high court of appeal. It gives rise even today to a strong sense of gratification in the American mind, because in contemplating it

³ President Monroe to Mr. Jefferson, 17 October, 1823.

we seem to be taking part in the mental processes out of which has come that principle of vigorous self-defence that is unquestionably the strongest element of American national conviction.

Mr. Jefferson declared in reply to the President that the question in these letters sent to him was the most momentous which had ever been offered to him to consider since that of independence. "That made us a 'nation,' " said he, "this sets our compass and points the course which we are to steer through the ocean of time opening on us. Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and particularly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavor should surely be, to make our hemisphere that of freedom."

He felt that one nation, Great Britain, could most disturb us in this; but she offered now to lead, aid and accompany us. She could do us more harm than all the nations on earth; with her on our side we need not fear the whole world. If a war should result from the present proposition it would not be England's war, but ours. It would have for its object to introduce and establish the American system, of keeping out of our land all foreign Powers,—of never permitting those of Europe to intermeddle with the affairs of our nations.

Therefore, he could honestly join in the declaration that the United States have no intention of acquiring any part of the Spanish colonies, and that we shall not stand in the way of an amicable arrangement between them and the mother country, but that we will oppose with all our means the forcible interposition of any other Power as auxiliary or under any other form or pretext, and especially their transfer to any Power by conquest, cession or acquisition in any other way. He gave it as his opinion that the President should encourage the British Government and should assure it of his agreement with the propositions contained in Mr. Rush's letters, as far as his authority went.

Mr. Madison replied to the President, that the professions of friendship already made by the United States to the South American colonies by recognizing their governments, and our sympathy with their liberties and independence called upon us to use every effort to defeat the attack that was then being planned against them. He thought it particularly fortunate that the policy of Great Britain, though guided by calculations different from ours, had presented a coöperation for an object the same with ours. Although Mr. Canning's proposal to Mr. Rush was made with the air of *consultation*, there could be no doubt, he said, that the British course was already settled upon and would be carried out whether we agreed to join with it or not; though this consideration ought not to divert us from what is just and proper in itself. He decided, therefore, as Mr. Jefferson had done, that the United States ought to accept the proposal, and he declared that "our coöperation is due to ourselves and to the world."

Throughout the month of November and immediately preceding the session of Congress at the end of the year 1823, the question of Mr. Canning's proposals was almost constantly the subject of discussion at the meetings of President Monroe and his Cabinet, as well as also the correspondence carried on by Mr. Adams, as Secretary of State, with the Russian Minister in Washington, Baron Tuyl, in regard to certain plans and intentions which Russia had at that time for extending her colonization along the Pacific Coast of America.

Mr. Adams thought that Canning wanted some public pledge from the United States not only against the forcible intervention of the Holy Alliance in Spanish America but also especially against the acquisition by the United States of any part of those countries; whilst Mr. Calhoun was in favor of giving discretionary power to Mr. Rush to join in a declaration against the interference of the Holy Alliance if necessary, even if it should pledge the United States not to take Cuba or Texas.

Though the President appeared at times inclined to grant such power, Mr. Adams was not in favor of it. He did not believe that the Holy Alliance had any direct intention of attacking us, though he thought that if they succeeded in overcoming the Spanish provinces

they might recolonize them and partition them amongst themselves. Russia might take California, Peru and Chile; France might seize Mexico where she desired to establish a monarchy under a prince of the House of Bourbon, and Great Britain, if she could effectively resist the plan thus laid out, would probably take the Island of Cuba as her share of the scramble. Then what would be the situation of the United States, he said,—England holding Cuba, and France Mexico? On the other hand, if the allies should interpose and Great Britain should withstand them alone, it would throw the colonies entirely under her control and make them her colonies rather than those of Spain. Consequently, he declared that the United States must act promptly and decisively. But the act of the Executive could not, after all, commit the nation to a pledge of war. Nor was this contemplated by Canning's proposals. As Great Britain would not be pledged to war by what Canning had said, "so anything now done by the Executive here leaves Congress to act or not, according as the circumstances of the emergency may require."

The discussion concerned principally the preparation of the President's message which was to be delivered to Congress within a few days, at the opening of the session; and, on the 25th of November, Mr. Adams prepared a draft of his observations recently made to Baron Tuyl, which contained a full statement of the policy of the United States, and included this declaration:

That the United States of America and their government could not see with indifference the forcible interposition of any European Power, other than Spain, either to restore the dominion of Spain over her emancipated colonies in America, or to establish monarchical governments in those countries, or to transfer any of the possessions heretofore or yet subject to Spain in the American hemisphere, to any other European Power.

Here we have the essence of the President's Message itself. He sent it to Congress on the second of December, 1823; and in it, in reference to the interchange of opinions lately had with Russia particularly and with Great Britain, he said:

The occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved,

that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Powers. . . . The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European Powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defence. . . . The political system of the allied Powers is essentially different in this respect from that of America. . . . And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those Powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.

With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States. . . .

Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its Powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every Power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied Powers should extend their political system to any portion of either continent without endangering our peace and happiness. . . . It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference.

Here, then, is the original and official statement of the Monroe Doctrine as enunciated by the President himself in his message to Congress. It is not an act of legislation, neither does it call for

legislative authority from Congress to give it the formal and legal sanction of the United States Government as a mode of procedure, or of a process subject to judicial determination and enforcement as the law of the land. Neither did it spring forth spontaneously from the brain of President Monroe as the result of his own personal judgment in the direction of the policy of his administration, or his individual conclusions alone in meeting and solving the grave political questions of international intercourse that presented themselves during his time. We have seen that other minds as well had occupied themselves with these problems; that the President had even consulted with and discussed them, for instance, with Mr. Jefferson, Mr. Madison, Mr. John Quincy Adams and Mr. Calhoun, whose replies and arguments are well known.

But it was a declaration of policy, a rule of conduct in regard to our own independent position in the world and amongst other nations which embodied the expressed will and the conscious determination of the American people. It met as such with an immediate approval, with hearty response throughout the country, which, up to the present time, have never been weakened.

It has been the object of study and inquiry upon the part of American statesmen in each succeeding generation, whose judgment has served to extend its influence and confirm the validity of its national principles. Mr. Webster said in interpretation of it, in the Senate in 1826:

The amount of it was, that this government could not look with indifference on any combination among other Powers, to assist Spain in her war against the South American states; that we could not but consider such combination as dangerous or unfriendly to us; and that, if it should be formed, it would be for the competent authorities of this government to decide, when the case arose, what course our duty and our interest should require us to pursue.

And Mr. Calhoun said, many years afterwards, in 1848, also in a speech in the Senate, that when Mr. Canning's communication to Mr. Rush reached this country, it was received with joy, "for so great was the power of the Alliance that even we did not feel ourselves safe from its interpositions."

I remember the reception of the dispatch from Mr. Rush as distinctly as if all the circumstances had occurred yesterday. I well recollect the great satisfaction with which it was received by the Cabinet. As was usual with Mr. Monroe upon great occasions, the papers were sent around to each member of the Cabinet, so that each might be duly apprised of all the circumstances and be prepared to give his opinion. The Cabinet met. It deliberated. There was long and careful consultation, and the result was the declaration of the President. All this has passed away. That very movement on the part of England, sustained by this declaration, gave a blow to the Celebrated Alliance from which it never recovered. From that time forward it gradually decayed, till it utterly perished.

We cannot attempt to follow the application of this rule of American policy to the numerous cases in which it has been brought to bear, or to examine in detail the very voluminous correspondence that has accompanied the assertion of its principles in the course of the diplomatic discussion of the relations of European countries in the last hundred years toward every country on the South American continent.

The attitude of the United States has been perfectly consistent, however, throughout, in maintaining neutrality amid the disagreements and conflicts that have arisen between these nations. We have not sought to impose our own political ideas upon the South American republics, nor have we interfered with their right to determine what kind of government each of them might select or choose to set up for itself; nor have we taken part, on the other hand, against the proceedings of the European governments against them as long as such action has related to the enforcement of obligations duly assumed, or for the redress of wrong.

When Mr. Clay was Secretary of State, in 1825, he declared this to be our policy; saying that, whilst we do not desire to interfere in Europe with the political system of the allied Powers, we should regard as dangerous to our peace and safety any attempt on their part to extend their system to any portion of this hemisphere. The political systems of the two continents, said he, are essentially different; each has an exclusive right to judge for itself what is best suited to its own condition and most likely to promote its own happi-

ness; but neither has a right to enforce upon the other the establishment of its peculiar system.

And Mr. Adams, in the same manner, had declared that the necessary consequences will be, that the American continents henceforth will no longer be subjects of colonization. Occupied by civilized independent nations, they will be accessible to Europeans and to each other on that footing alone, and the Pacific Ocean in every part of it will remain open to the navigation of all nations, in like manner with the Atlantic.

The United States Government has openly declared this, upon its own authority, before the world. It assumed that responsibility by the Monroe Doctrine, and it has not altered its determination since the time of President Monroe himself. Nor can there be any question whatever that the government will insist upon the integrity of this principle; neither that an open disregard of it by a foreign nation, if carried to the point of refusing to admit its international validity, would lead to a conflict of arms.

The case that best represents, amongst the many others that have arisen, the character of this sentiment and illustrates the international policy of the United States in this respect is that of Mexico at the time of the attempted domination in that country of the Emperor Maximilian, which brought the United States to the verge of a war with France in 1865.

It had become known in Washington a few years before the American Civil War that a naval and military armament was to be sent out from Spain to attack Mexico in the distracted condition of that republic; which aroused immediate attention and gave rise to very serious anxiety upon the part of the Administration. Mr. Cass, who was then Secretary of State, instructed the United States Minister in Madrid to draw the attention of the Spanish ministry to the position taken by the United States, that they would not consent to the subjugation of any of the independent states of this continent to European Powers, nor to the exercise of a protectorate over them, nor any political influence to control their policy or institutions.

"With respect to the causes of war between Spain and Mexico," he declared, "the United States have no concern, and do not under-

take to judge them. Nor do they claim to interpose in any hostilities which may take place. Their policy of observance and interference is limited to the permanent subjugation of any portion of the territory of Mexico or of any other American state to any European Power whatever."

In the meantime, American naval forces were sent into Mexican waters, sufficient to look after the interests of American citizens in Mexico during the conflict which it appeared then would inevitably arise out of the demands not only of Spain but of England and France as well, all of whom had grievances against Mexico by reason of violence, injury and acts of injustice suffered in that country by the citizens of each, for which redress was now demanded by these governments.

And it happened, in fact, that naval vessels of England, France and Spain sailed for Vera Cruz, in 1862, with the expressed intention of seizing the custom-houses in certain Mexican ports, for the purpose of satisfying the respective claims of those countries.

The port of Vera Cruz was captured according to this plan and held by the three allies. But, a difference of opinion having arisen between them at that stage of the enterprise, the English and Spanish commanders, dissatisfied with the conduct of the French, reached an agreement with Mexico as to their separate claims and withdrew from the expedition.

The French, however, continuing their demands upon Mexico after the retirement of their allies, began at once a march toward the City of Mexico, which they reached and took military possession of in June, 1863. There they established a provisional government and called together an assembly of notables, which decided that an empire should be erected, the throne of which should be offered to the Archduke Maximilian, brother of the Emperor Francis Joseph of Austria; and that if he should decline, the place should be filled by a selection made by the Emperor of the French. Maximilian accepted this invitation to become Emperor, and entered the City of Mexico, as Maximilian I, in June, 1864.

The sad ending of this political episode and the details connected with the capture and death of the unfortunate Maximilian are well

known to all and still remembered by those who interest themselves in the public questions of that day. He had entered into an undertaking which appeared to him and his supporters as one full of promise; and, under the impelling influences of a personal ambition entirely reasonable in the case of a man situated as he was, who undoubtedly hoped that in providing for his own advancement he should be able to benefit as well as improve the condition of the people over whom he was about to rule.

But he fell victim to a set of circumstances which he did not conceive of in advance, and to difficulties from which he could neither extricate himself nor were his patrons in France able even to preserve his life. The hostility of the United States, however, was not directed against the Archduke in person, nor was he the object of the slightest discourtesy on our side; but the attitude of the United States Government, and the inevitable assertion of the Monroe Doctrine, made the enterprise a failure from the start.

It was the attempt to set up a monarchy in America which aroused the national sentiment of the people of this country.

Very early in the correspondence which grew out of it, Mr. Seward had declared officially, as Secretary of State, that, whilst this government had no intention to interfere in any way with the war between France and Mexico, the United States had not disclaimed the interest they felt in the safety, welfare and prosperity of Mexico, any more than they could disown their sentiments of friendship and good will toward France, which began with their national existence. The United States could only deplore the painful occurrence and express their anxious desire that the conflict should be brought to a speedy close by a settlement consistent with the stability and welfare of the parties concerned.

Also, that the United States had always acted upon the same principles of forbearance and neutrality in regard to wars between Powers with which our country has maintained friendly relations, which policy could not then be departed from with advantage to us or in the interest of peace throughout the world.

He asked of France, however, an explanation of her object and purpose in this connection, to which the Imperial Government re-

plied that it did not intend to occupy permanently or to dominate Mexico, but that it would leave that people free to choose its own form of government; and at different stages of the intercourse France renewed the explanations that she had thus given.

The campaign of the French progressed in the meantime. Having captured Pueblo, they finally entered the City of Mexico itself, in which they established a provisional government. Mr. Seward complained that France had made no communication to the United States concerning this provisional government, nor announced any actual departure from the policy in regard to that country which her explanations led him to expect that she would pursue.

But he began to suspect that the situation was developing in a manner quite different from what he had hoped for and endeavored to encourage.

The United States were in the midst of war themselves, which required the employment at home of all the efforts and resources of the country in bringing the conflict to its termination. Mr. Seward declared in writing to Mr. Motley, then Minister to Austria, that whilst so engaged in the war, even those in Washington who thought that intervention in Mexico to prevent the establishment of an imperial monarchy would be just in itself, admitted that such a step now would be unwise. The first-fruit of the American Civil War had been, he said (to Mr. Dayton, 1863), that the Governments of Great Britain, France and Spain had assumed an unfriendly attitude toward this country. The Emperor of the French had adopted the current opinion of European statesmen, that the effort to preserve the Union was hopeless; and he attributed to this prejudgment the Emperor's decision to act in concert with Great Britain upon questions that might arise out of the Civil War.

But as soon as the termination of the war had restored peace in the United States and relieved our government from the burdens of responsibility in that direction, the attitude in Washington grew firm and the tone of diplomatic correspondence assumed a force which indicated beyond question that the American Government was about to act; for troops had already been sent to the line of the Rio Grande under General Sheridan, ready to advance.

Mr. Seward then addressed his definitive note to the French Government, in which he said:⁴

It has been the President's purpose that France should be respectfully informed upon two points: first, that the United States earnestly desire to continue and cultivate sincere friendship with France; secondly, that this policy would be brought into jeopardy unless France could deem it consistent with her interest and honor to desist from the prosecution of armed intervention in Mexico to overthrow the domestic republican government existing there, and to establish upon its ruins the foreign monarchy which has been attempted to be inaugurated in the capital of that country.

This brought the French expedition to an end. All the Imperial troops were withdrawn, and the undertaking was abandoned within two years from that time.

That incident led to a practical test of the international force of the Monroe Doctrine—its effect upon the minds and policies of foreign statesmen. It was a tacit admission also of its validity under the circumstances presented at the time by the case of Mexico, for France abandoned her expedition and gave up the thought of planting a monarchy on American soil.

The apparent contradiction involved in this was, that she yielded to its mandates whilst refusing to recognize it either as international law or international right. For, the European jurists are almost unanimous even now,—including amongst them both the French and English writers,—in declaring that the Doctrine is untenable and not binding by the accepted rules of law.

One of the most distinguished of the modern British international lawyers has said, for instance,⁵ that the United States could not by declaration effect the international status of lands claimed, ruled or discovered by other Powers. They might proclaim in advance

⁴ Mr. Seward, Secretary of State, to Mr. Bigelow, Minister to France, 16 December, 1865.

⁵ The Monroe Doctrine, W. F. Reddaway, Cambridge, 1898. See also *La Doctrine de Monroe*, Maurice de Beaumarchais, Paris, 1898; Sir Frederick Pollock, "The Monroe Doctrine," *The Nineteenth Century*, October, 1902; Merignhac, "*La Doctrine de Monroe, à la fin du XIXe Siècle*," *Revue du Droit Public et de la Science Politique*, 1896, p. 206; *Les Etats-Unis et la Doctrine de Monroe*, Hector Petin, Paris, 1900; *Die Monroedoktrin in ihren Beziehungen zur amerikanischen Diplomatie*, Herbert Kraus, Berlin, 1913, pp. 360-61.

the policy which they would adopt when such questions should arise, but no unilateral act could change the law of nations. He asserts that it is a very vague declaration of policy, and in no way a formulation of rules prevailing between states. From the first word to the last, it is a declaration of the policy of a single Power.

And so, in fact, it is,—the policy of the Government and the people of the United States of America. Whilst they last, it will last.

Nor have the European governments formally recognized their obligation under the Monroe Doctrine, or our right to enforce it. For, even in the present Versailles Treaty of Peace with Germany, the most that they have been willing to concede has been to refer to it as a "regional understanding." Article 21 of the League of Nations provides that: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine." A statement so non-committal that it is difficult to ascertain what meaning it may have at all in relation to the Monroe Doctrine; since its validity is not in the least defined by it, nor does it set forth who, if any, of the contracting parties is bound by the principles of the so-called "regional understanding," or who is a party to it.

If they refused to recognize its validity, and the engagement into which they enter now provides that the Covenant shall not affect that validity, then, evidently, they remain where they were before, and are in no wise further bound.

But, on the other hand, we have remained where we were before. The determination of the American people responds still, as it did a hundred years ago, to the declaration in President Monroe's message that:

It is impossible that the allied Powers should extend their political system to any portion of either continent without endangering our peace and happiness. . . . It is equally impossible that we should behold such interposition in any form with indifference.

I do not know how to express the American public feeling so well as to repeat what Daniel Webster said in regard to it when addressing the Senate in 1826:

It [the Monroe Doctrine] has been said, in the course of this

debate, to have been a loose and vague declaration. It was, I believe, sufficiently studied. I have understood, from good authority, that it was considered, weighed, and distinctly and decidedly approved, by every one of the President's advisers at that time.

Our government could not adopt on that occasion precisely the course which England had taken. England threatened the immediate recognition of the provinces, if the allies should take part with Spain against them. We had already recognized them. It remained, therefore, only for our government to say how we should consider a combination of the allied Powers, to effect objects in America, as affecting ourselves; and the message was intended to say, what it does say, that we should regard such combination as dangerous to us. Sir, I agree with those who maintain the proposition, and I contend against those who deny it, that the message did mean something; that it meant much; and I maintain, against both, that the declaration effected much good, answered the end designed by it, did great honor to the foresight and the spirit of the government, and that it cannot now be taken back, retracted, or annulled without disgrace.

It met, sir, with the entire concurrence and the hearty approbation of the country. The tone which it uttered found a corresponding response in the breasts of the free people of the United States. That people saw, and they rejoiced to see, that, on a fit occasion, our weight had been thrown into the right scale, and that, without departing from our duty, we had done something useful, something effectual, for the cause of civil liberty.

THE SANCTION OF INTERNATIONAL LAW

By RONALD F. ROXBURGH

Of the Middle Temple, England, Barrister at Law

EVERY satisfactory definition of law implies a sanction.¹ Some penalty must be imposed upon a law-breaker, to be exacted, in the last resort, by external power.² Force, therefore, is vital to law as it is to war, though normally it plays a less obvious part.³ A felon who is brought up for trial, condemned, and sent to prison, is induced by force, or by the fear of force, to submit to the court and to punishment. The policeman and the warder are the instruments of external power by which he is constrained to obey.

Force also supplies the most important incentive for securing obedience to law. It is true, as Maine pointed out,⁴ that for every man who keeps the law through conscious fear of punishment, there may be hundreds who do so as it were instinctively, and without a thought on the subject. But while this law-abiding spirit, which is characteristic of large sections of a modern community, owes its origin to a number of causes, perhaps the most potent of all has been the enforcement of law through long ages in the past.

But the power which stands ready to enforce the law in every ordered state, and diverts many would-be offenders from their purpose, itself came into being by the will or consent of the dominant part of the community, and relies for its support on their continued

¹ Für das Feuer ist das Brennen nicht wesentlicher als für das Recht die Erzwingung seiner Befolgung. Jhering, *Zweck*, I, 321, quoted by Holland, *Jurisprudence*, 11th ed., p. 42.

² Legum eas partes quibus poenas constituimus adversus eos qui contra leges fecerint sanctiones vocamus. Justinian, *Inst.*, II, i, 10.

³ "Those persons against whom the state administers justice are commonly so completely within its power that they have no choice save voluntary submission and obedience. It is enough that the state possesses irresistible force and threatens to use it; its actual use is seldom called for." Salmond, *Jurisprudence*, 3rd ed., p. 97.

⁴ *International Law*, p. 50.

consent. Historically examined, the sanction of law did not, of course, spring into being fully armed in response to some clear call from the community. On the contrary, "the farther we penetrate into the primitive history of thought, the farther we find ourselves from a conception of law which at all resembles a compound of the elements which Bentham determined,"⁵ and it is desirable to emphasize incidentally the voluntary and arbitral character of much of the early administration of law.⁶ But properly interpreted, history does not belie the proposition that the complex process of development resulting in a modern community in the general enforcement of law by regular and irresistible action cannot be dissociated from the successive steps by which states have come to desire such laws and their enforcement. New rules will only be put into operation⁷ if they meet with the general approval of the members of the community for the time being; rules which have come down from the past will fall into disuse, if they have ceased to enjoy general acquiescence.

It may be a difficult matter to ascertain the precise degree of general consent which any particular rule, or indeed any system of laws, enjoys at any given time. In every state there will be some who strongly uphold the law, some who consent to its enforcement, some who acquiesce, and some who long for its overthrow; but the strength of these parties cannot be measured merely by counting their supporters. Individuals differ, not merely in their opinions, but also in their opportunity of giving effect to them; and so it happens that an existing government or administration can continue to exercise its functions, within certain limits, after it has lost the support of the majority of the community. But putting aside such considerations, and leaving out of account the inherent power of resistance to change found in every established order of things, it may be stated as a general proposition that a law or system of laws will be enforced so long as the weight of public opinion behind it is greater than that in favor of its overthrow, and not much longer.

⁵ Maine, *Ancient Law*, 10th ed., p. 7.

⁶ *Ibid.*, Note by Sir F. Pollock at p. 23.

⁷ "Public opinion, which is the ultimate sanction of all law." Hall, *International Law*, 8th ed., p. 15. Cf. also Oppenheim, *International Law*, I, p. 16.

Recent events supply two apt illustrations of the dependence of law on public opinion. A few months ago an impending national strike on the railways of Great Britain seemed to threaten, by its possible consequences, the whole system of law and government. But as soon as the blow fell, it was at once evident that the general body of the public were wholly opposed to constitutional changes brought about by pressure from any single section of the community, and from that moment the ultimate issue was certain. When, on the other hand, Germany and Austria challenged the public order of Europe in 1914, the challenge was not at once accepted by every member of the family of nations, nor by so many of them as to make the task of the law-breaker hopeless from the outset. And so the issue was long in the balance, and the law of nations was suspended for a time.

But though a comparison between these two cases shows that the sanction of the municipal law of England proved to be stronger than that of the public law between states, the difference between them was solely one of strength, and not at all a difference in kind. Both systems of law depend for their enforcement upon external power resting upon general consent; neither can ever be wholly exempt from the possibility of breakdown or overthrow.⁸

In truth, there is no alternative to consent as the basis of the law of nations, and there is and can be no substitute for external power as the ultimate means of enforcing it. A mental predisposition to obey the law without doubt forms part of the inheritance of certain peoples, and this, and the law-abiding habit which it engenders, are fostered by many influences which do not owe their compelling power to physical strength. Many thoughtful men who have been impressed by such reflections as these, have contemplated the ultimate establishment of a form of society from which the use of force might be altogether eliminated. There is, however, small ground for hoping that such an organization could be set up to govern the relations between state and state. No community of any size has been able to dispense with force as a background for its political and judicial

⁸ The fact that international law is not always enforced cannot affect its claim to be regarded as law. "A weak law is nevertheless still law." Oppenheim, *International Law*, Vol. I, p. 14.

administration; yet in some of them reverence for law has been known to be strong. In the sphere of public international law the law-abiding spirit is weak, and wages an unceasing struggle against national and racial instincts and aspirations. But this is not its only source of weakness. It is probable, as has already been suggested, that the inherited predisposition to obey the law, which is characteristic of some communities, was originally induced by a painful and intimate understanding of the nature of forcible punishment. Moreover, even if a spirit of reverence for law could in fact be established solely by influences removed from all thought of physical compulsion, it could hardly hope to survive in a community where offenders escaped all punishment except moral rebuke and such redress as the sufferer might be able to exact for himself.

The well-known passage in which Maine argues that "the founders of international law, though they did not create a sanction, created a law-abiding sentiment,"⁹ is liable to misunderstanding. At the time when the modern law of nations came into existence, there had sprung up in western Europe a number of independent states, whose sovereigns or statesmen had already felt the need of some rules to regulate their dealings with one another. The early publicists stepped in to supply the need, and offered a body of rules constructed on a basis partly moral, partly religious, partly scholastic and partly historical.¹⁰ Many of them were adopted; they became usages, and in process of time customary rules of law. No doubt, the lessons of respect for law, which these early writers taught, were not without valuable influence upon the men who put the new rules into practice, and so their writings assisted in securing their adoption;¹¹ but by the time that some of these rules were regarded no longer as optional but as obligatory, states must have contemplated the prospect of their enforcement by other means than their own reverence for law.

But though a law-abiding spirit cannot be a substitute for force as the sanction of law, its cultivation is of great importance. It

⁹ International Law, p. 51.

¹⁰ Cf. Oppenheim, *op. cit.*, Vol. I, p. 17.

¹¹ Cf. Emerson, Essay on Politics. "The gladiators in the lists of power feel, through all their frocks of force and simulation, the presence of worth."

renders obedience more palatable, since compliance through fear is always distasteful, while to do right without a thought involves no effort at all. Moreover, once it is established, it strengthens the determination of the community that a member who breaks the law should be punished. Respect for law, and the enforcement of the law by external power, are curiously interdependent.

External power, therefore, supported by the general consent of the family of nations, and assisted by such reverence for law as may be found among its members, is the instrument by which the law of nations is enforced. So far the sanction of international law is identical with that of all law. But if we pass on to consider the manner in which this external power is applied, important points of difference begin to appear. For in a modern civilized state, the members of the community do not in a body undertake the enforcement of law, but delegate their powers to a few of their number, specially selected for the task. They set up a government comprising a legislature to make the laws, a judicial branch to expound and apply them, and an administrative organization to enforce them. But the family of nations has evolved no similar machinery,¹² and the members themselves, organized hurriedly for the occasion, have to play a direct part in securing obedience to their laws. Intervention by other Powers, or the threat of intervention, constitutes the most important, and the more usual method, of enforcing the law of nations.

It is at all times possible for the nations of the world, if only their will to act is sufficiently strong, to compel a refractory state to obey the rules which they have agreed to regard as obligatory in their mutual dealings. It may not be necessary for them to resort to armed force; a threat to use it, supported by an unequivocal display of determination, may suffice; or again financial or commercial pressure may be an effective means of constraint. During the war, belligerents attached such importance to the good will of neutral states that they spent large sums of money on propaganda, often in countries which

¹² Neither the machinery devised at The Hague Conferences nor that contemplated by the Covenant of the League of Nations can be properly regarded as first experiments in international government.

they could not hope to bring into the field on their side; by printed and spoken word, by wireless and by film, each sought to justify his acts by the standard, not only of justice, but also of international law. The desire to have access to the supplies of neutral money and raw materials was the primary motive for this lavish expenditure, and the neutral Powers, being in a position to grant or withhold such aid, might have brought strong pressure to bear upon any belligerents which seemed to them to have violated the law, if the course of the struggle had been somewhat different.

Commercial and financial intervention, combined with naval pressure, was a method of enforcing respect for international obligations upon the smaller states which was adopted during the nineteenth century. It was a measure of restraint short of war, known as "pacific blockade," and it was employed against Greece in 1886, against the Island of Crete in 1897, against Venezuela in 1902, and on other occasions.¹³ It is probable that the economic boycott, with or without military or naval pressure, will in future play a still more prominent part in enforcing international law.

Another form of intervention without resort to war is by pressure of moral disapprobation. The adverse judgment of the family of nations does, in some cases and to a certain extent, deter or punish; but it is impossible to assess the strength of this elusive form of sanction. For its effectiveness will depend partly on external circumstances, such as the lawbreaker's opportunity for silencing hostile criticism by achieving instant success, or by diverting the eyes of the world to other more sensational objects, partly upon the prevailing international morality, and partly upon the national character of the offending state. This national character does not bear a relation to that of its members which is capable of exact definition,¹⁴ and can only be discovered by special observation and study; but perhaps, as a general rule, states will be less sensitive to the bad opinions of others than would be an individual of similar temperament, both because

¹³ See Oppenheim, *op. cit.*, Vol. II, p. 48; Hall, *International Law*, 6th ed., p. 364.

¹⁴ "There is a genius of a nation, which is not to be found in the numerical citizens, but which characterizes the society." Emerson, *Essay on Nominalist and Realist*.

responsibility is more widely diffused and blame less easily assignable, and because a sense of national insularity supported by a strong patriotism is less painful than individual isolation. But however difficult it may be to appraise the strength of moral disapprobation as a sanction of international law, it is not open to question that it sometimes operates to restrain or punish a law-breaker. The law of nations does, to a large extent, supply the standard by which the conduct of states is judged, and whenever it is broken, the offender is always ready with excuse and justification.¹⁵ It will be of interest to see how far the feeling recently reported to prevail in some quarters in Germany that the German Empire is an outcast from the civilized world may influence the future development of German national policy and its attitude towards international law.

But if commercial, financial or moral pressure are unavailing, the only means of enforcing the law of nations which remains (other than self-help) is direct intervention by force of arms.¹⁶ This is a means, the effectiveness of which, whether as a deterrent or as an instrument of punishment, and whether in peace or in war, varies with the changing political situation, and its study reveals one of the most important points of contact between international law and diplomacy.

In a period of peace, a state that is anxious to break the law must take into consideration the political and military strength of its friends as compared with that of the states which may be expected to oppose it; it must also consider the manifold influences which may induce friend or opponent to intervene or to stand aside. If irresistible forces appear to be mobilizing to support the law, it will not be lightly broken; and if it is broken, punishment will probably be swift to follow. When, on the other hand, the position of the would-be offender, fortified by the prospective help of his friends, would be hard to assail, and other states show reluctance and hesitation to intervene, he may decide to take the risk.

¹⁵ Cf. Oppenheim, *op. cit.*, Vol. I, p. 15.

¹⁶ It is impossible to agree with Bonfils (*Manuel de droit International Public*, 6th ed., p. 12) that war cannot be the sanction of international law in the sense in which the word is used in jurisprudence. It would seem that it can be if the external force is being applied by the general consent of the community and for the purpose of vindicating the law.

Such was the policy of Russia after the Franco-Prussian War. She felt that the Powers, handicapped by the exhaustion of France, would be slow to undertake active intervention in support of the treaty arrangements in the Near East of 1856 and 1871; and so she took the risk of violating them; but her policy was only partly successful. Acting from similar motives, Austria, in 1908, took the opportunity provided by the embarrassments of Russia after the war with Japan to disregard the obligations of the Treaty of Berlin. She believed that since Russia was unable to speak with her accustomed weight in the councils of Europe on behalf of the Slav races, the other Great Powers would confine themselves to a mere protest.

Thirdly, if political power is so evenly adjusted that no reliable estimate can be formed of the probable consequences of an upheaval, the intending law-breaker may either be deterred from treading such a perilous path of uncertainty, as Germany was deterred for several critical years before the war, or he may have sufficient self-confidence to tempt the issue in the spirit in which Germany invaded Belgium in 1914. The effectiveness of the sanction of the law in such circumstances can only be determined after the event.

Rather different considerations will determine the attitude of belligerent states towards the laws of war or neutrality. If the strength of one warring state and its allies is immeasurably greater than the strength of the opposing state and its allies, the rules of law will probably secure general observance by all. The strong party will conform with them because the demands of necessity will not be exacting enough to make it worth while to incur the displeasure of neutral states; the weak party will conform for fear of adding a neutral to the number of its foes. Indeed, in such a war the stronger state not uncommonly makes concessions to neutrals which they have no legal right to claim, hoping in this way to gain prestige without prejudicing the prospect of easy victory. Mr. Quigley, in his recent book on the "Immunity of Private Property from Capture at Sea," quotes as an illustration of this tendency the promise made by France, on sending an armed expedition into Spain in 1823, that immunity would be granted to merchant vessels, whether Spanish

or foreign, except such as attempted to break blockade; and he adds "France lost but little by renouncing the right of capture and gained greater respect for her enterprise."¹⁷

But if the Powers at war are evenly matched, each will carefully assess the strength of neutral states, and set the likelihood and probable consequences of intervention by any of them against the immediate gain to be expected from breaking the law. The possible benefits of an illegal policy will at once appear to be outweighed by its dangers if the states at war are few and the number and strength of the neutral states would dispose them to take concerted action against an offender. But if the states taking part in a closely contested war are many and powerful, while the neutral states are few and weak, a belligerent which contemplates a violation of law is confronted with a very difficult calculation. For the intervention of even a single neutral might turn the scale against him; on the other hand, it might not, and neutrals do not in such circumstances readily undertake intervention, while the advantages to be gained over the enemy may appear very alluring. Big nations at close grips are peculiarly open to desperate counsels, and in making a calculation of this kind often fall into errors beyond repair. Germany paid a heavy penalty for undervaluing the sanction of international law when she broke in upon Belgian neutrality in 1914, or when she devised her illegal submarine warfare. Indeed the events of the war may suggest to some future historian the gratifying reflection that, incredible though it may now seem to those who have passed through the upheaval, the external power which enforces the law of nations made an important contribution towards the defeat of Germany.

Unfortunately, punishment in a world-wide conflict follows with such lingering steps in the wake of the crime, and is exacted at so great a cost, that public opinion, both then and in after years, is bewildered by the thousand episodes of the contest, and by the varying fortunes of the struggle, and it does not readily grasp the sequence of crime and punishment. And so the study of history does not always teach to a world at peace those terrible lessons which ought to deter every nation from defying international law; one of

¹⁷ Immunity of Private Property from Capture at Sea, p. 24.

them takes its chances in a bid for supremacy, and if third parties do not interpose instant and overwhelming pressure, the state upon which the first blow falls is driven to self-help.

Self-help is generally included by publicists among the sanctions of international law; "in the necessary absence of a central authority for the enforcement of the rules of the law of nations, the states have to take the law into their own hands."¹⁸ But though this method of enforcement cannot be eliminated from a system of law which has not reached maturity, it is so uncertain in its operation, and is accompanied by so many disadvantages, that it often causes a temporary breakdown of law instead of vindicating it. For the party resorting to self-help is unlikely to possess strength sufficient to make resistance hopeless, and so the attempted administration of punishment may degenerate into a brawl. Every system of law has found it desirable to confine this method of enforcing its rules within the narrowest compass, by strengthening the more regular sanctions,¹⁹ and this is a task which confronts the international law of the future; but hope of progress lies, not in forbidding a state to resort to self-help, but in making such a course unnecessary.

Diplomatic history records many attempts to improve and add to the means available for securing the observance of international law, and in particular of treaty obligations. Among them are the occupation of territory, the taking of hostages, and treaties of guarantee. But of these methods, the first two are varieties of self-help, and the third is a device to render intervention by third states more probable. Another expedient, generally adopted in the sixteenth and seventeenth centuries, was the confirmation of a treaty by an oath;²⁰ this was an attempt to invoke the sanction of religion in aid of a legal relationship.

During the long period of international conferences and conventions which preceded the war, no further efforts were made to strengthen the sanction of the law of nations. Article 3 of the IVth

¹⁸ Oppenheim, *op. cit.*, Vol. I, p. 13.

¹⁹ For the limits within which self-help is permitted in English law, see Odgers, *The Common Law of England*, Vol. II, p. 953.

²⁰ See Oppenheim, *op. cit.*, Vol. I, p. 565.

Hague Convention of 1907 made belligerents liable to pay compensation for violations of the laws of war comprised in it, but it did not explain how such compensation was to be exacted from a victorious offender. The preoccupation of those days was to give greater precision and certainty to the rules of law and to think out new means of settling disputes as to their application and interpretation by agreement between the parties at issue; the ninety-seven articles of the first Hague Convention of 1907, providing for good offices, mediation, and arbitration, were devised with that object. The value of these methods of preventing armed conflict is great, and it is easy to forget, at a time when their failure in the critical days before the greatest world war is entrenched upon the memory, the many occasions on which they have proved successful. But in so far as they succeed, they do so by persuading the contending parties to come to terms, or to accept the award of a disinterested person, and not by the use or threat of external power. Therefore, although they may induce nations not to break the law, or to make reparation for wrong done, they cannot enforce the law, or inflict punishment. They are not sanctions of the law.

The Covenant of the League of Nations of itself provides no new or strengthened sanction for international law. The members contract to submit any dispute likely to lead to a rupture, either to arbitration, or to inquiry by the Council, and they promise to refrain from hostilities until three months after the award or report; they further undertake not to resort to war against a member of the League which complies with an award, or with the recommendation of a report unanimously agreed upon by all the members of the Council²¹ other than the representatives of parties to the dispute; and they direct the Council to formulate plans for the establishment of a Permanent Court of International Justice. These, and other arrangements comprised in the Covenant, should have valuable results in promoting international coöperation, and making war less frequent; but they will not be indebted for any success that they may achieve to any magic in the penalty clause which, if an offence comes within

²¹ The Covenant also provides for the submission of a dispute to the Assembly, and for a report by the Assembly upon it.

the scope of Articles 12, 13, or 15, is brought into operation. The offender,²² according to this clause,

shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse. . . .

It shall be the duty of the Council in such case to recommend . . . what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the Covenant of the League."

The Covenant of the League of Nations appears to contemplate that defaulting members will be compelled to carry out their obligations by the use of the instruments of external power already available for the enforcement of international law,—intervention by force of arms, by moral disapprobation, or by the exercise of commercial and financial pressure. As in the past, so in the future, these instruments will be employed if, and only if, the general body of the community so desires, and their effectiveness will be governed by the principles already discussed.

Many hopes are being founded on this Covenant; some may be realized, others frustrated. But in the meantime it is the duty of all to bend their efforts towards strengthening the sanction of the law of nations. The elimination of self-help and intermittent, *ad hoc*, intervention by the creation of judicial and administrative machinery, regular in action, must be the goal of every legal system. But such machinery would be not merely useless, but supremely dangerous, unless it were founded upon the general consent of the community.

²² Article 16.

THE SETTLEMENT OF INTER-STATE DISPUTES

By ROBERT GRANVILLE CALDWELL, PH.D.

Assistant Professor of History, Rice Institute, Houston, Texas

It is the purpose of this paper to review the methods and the principles which have been involved in the quasi-international jurisdiction which has been exercised to settle the disputes which have arisen between the members of the great federations which have sprung from the British Empire of the seventeenth century. These methods have not only been widely copied in the past, especially by the various South American states and by Switzerland, but they are likely to become of compelling interest, if ever the world should apply the federal principle to the League of Nations of which we hear so much in these days.

I. COLONIAL ORIGINS

As soon as the colonies were thickly settled on the Atlantic shore of what is now the United States, it was natural for them to become involved in bitter disputes about their conflicting boundaries and trade regulations. These controversies were settled either (1) by informal agreements between the colonies, which were sometimes sanctioned later by the Privy Council, or (2) in the more serious cases by the Council itself acting under the royal prerogative. Since the disputes were almost always concerned with the interpretation of charters which came at least nominally from the King, it was evidently proper that the same King in Council should sit as the arbiter in these controversies. Sometimes the Privy Council decided these issues in London; again it sent out commissioners to bring the parties into agreement on the ground.¹ In every case the authority of the Council was looked upon by the distant colonists with the greatest jealousy, but its legal authority in such matters was never questioned.

¹ Osgood, *Colonies*, Vol. 3, p. 21.

It is safe to say that from the authority of this administrative body is derived the quasi-international authority of every federal court in the world, except the German Bundesrath whose power to settle the disputes of the members of the German Empire has a wholly distinct origin in the Diets of the Confederation and of the Holy Roman Empire.

The chief cases which came somewhat formally before the Privy Council in colonial days were: Massachusetts and New Hampshire, 1675-79, Pennsylvania and Maryland, 1683-1709, New York and Connecticut, 1700, Connecticut and Rhode Island, 1725-26, Virginia and North Carolina, 1726-27, Rhode Island and Massachusetts, 1734-46, Second Pennsylvania and Maryland Case, 1734-69, New Hampshire and New York, 1764, New York and Quebec, 1768.²

The first of these cases was not technically between two provinces, but between Massachusetts and the proprietors of Maine and New Hampshire. On January 13, 1675, Ferdinando Gorgas and Robert Mason complained that Massachusetts was dispossessing them of their inheritance in their provinces. December 22nd of the same year the committee of the Council reported that they had heard the representations of Mason and Gorgas, who asked that commissioners be appointed to settle the boundaries. But they "did not think it proper to advise your Majesty to determine anything 'ex parte' and without hearing what the Bostoners can say." The Council therefore was advised to send word to the "Bostoners" that His Majesty could not long delay doing justice, but "was unwilling to determine in a matter of so much weight without first hearing what they can say why your Majesty should not give the petitioners relief." On February 7th, the committee was ordered to examine all the documents in the case and to report to the Council. The committee obtained the opinions of the Chief Justices of the King's Bench and Common Pleas, whereupon the parties were ordered to be heard at the Board on a certain day "when His Majesty expects that they conteyne themselves within those bounds of Modesty and Respect that is due to the judges of

² Acts of the Privy Council, Colonial Series, 1613-1783; Andrews, Colonial Self-Government, 261; Greene, Provincial America, 21; Thwaites, Colonies, 174, 190-4, 267-9; Osgood, Colonies, Vol. 3, Chapter 10.

this Kingdome." The Council acquiesced in the opinion of the Justices, and after the parties had been heard again in rebuttal, "His Majesty was pleased to approve of and confirme the same, and did order, that all the parties do acquiesce therein, and contribute what lies in them to the punctual and due performance of the said report, as there shall be occasion." During these negotiations, Massachusetts tried to anticipate the unfavorable verdict of what she regarded as a prejudiced court by quietly buying Maine from Gorgas for twelve hundred pounds sterling. But she was finally compelled to relinquish her purchase to the King, who also took over the government of New Hampshire at the same time.³

The dispute between Virginia and North Carolina arose when the former refused to allow the tobacco of her neighbor to cross her territory. On complaint by North Carolina to the Board of Trade these acts were disallowed. This case is interesting because the high court settled a controversy between two colonies by declaring the laws of one invalid. The Supreme Court of the United States has never yet so combined its two most sweeping powers, to declare laws unconstitutional and to decide controversies between States, but there seems to be no reason why there should not some day again be a case to go back in its chief features to this early controversy, and indeed the suggestion of such a possible solution is to be found in the dispute between Louisiana and Texas over quarantine regulations.⁴ The controversy between North Carolina and Virginia was complicated by a boundary dispute which was finally settled by an agreement between the two colonies which received the sanction of the King.⁵

The colonies probably had no legal right to make binding agreements, but it was not the practice of the Crown to disturb such an agreement when it had been acquiesced in for any length of time and had led to the establishment of important private rights. Sir W. Murray, afterwards Lord Mansfield, gave an opinion (Nov. 5, 1754)

³ June 20, 1679. Acts of the Privy Council, Colonial Series 1, pp. 640, 844, 851. For the decree which settled the Connecticut River as the boundary between New Hampshire and what was then New York (1764) see Documentary History of New York (1851), II, 355.

⁴ 176 U. S. 143.

⁵ Thwaites, Colonies, 190-4.

in which he stated his view of such unsanctioned agreements. Referring to an agreement of 1713 between Connecticut and Massachusetts, he said: "I apprehend His Majesty will confirm their agreement, which of itself is not binding on the Crown, but neither Province should be suffered to litigate such an amicable compromise of doubtful boundaries. . . . If the King approves the agreement, I think it is now too late for the parties to dispute it."⁶

These early settlements were evidently not in any sense international arbitrations, but had all the paternal character of administrative determinations both in their nature and results. However much the colonies might neglect or disregard the common master, his legal authority was always there in the background of their relations. And even though the decisions from London were sometimes arbitrary and highhanded, the habit of looking to this common administrative court for solution of difficulties became a real though reluctant habit until almost the moment of war. And this long-established habit made possible the introduction of the provisions in the Articles of Confederation and later in the Constitution which were expected to fill the gap now left vacant by the Privy Council; and these provisions, in turn, have been copied in modified forms in practically all the Spanish-American states,⁷ in Australia, in Switzerland,⁸ and in the laws, though not the Constitution, of Canada. In Germany alone, the method of settling such problems by the Bundesrath⁹ is obviously of an entirely different origin, going back to the Diets of the Confederation and of the Holy Roman Empire.

In the century between 1670 and 1770 nine great cases involving such disputes came before the Privy Council. Only one of these came before an ordinary court in a fashion at all comparable to a modern case between two States in the Supreme Court of the United States. This was the case of *Penn v. Lord Baltimore*, which came for decision before Lord Chancellor Hardwicke in the High Court of Chancery, May 15, 1750. Some of the dicta in this case make it

⁶ 12 C. L. R. 704.

⁷ *E.g.*, Constitution of Mexico (1917), Art. 105; Argentina, Arts. 100, 101.

⁸ Switzerland, Constitution, Art. 110.

⁹ Constitution of German Empire, Art. 76.

the legal ancestor of our own modern controversies. But it is to be remembered that this was not an original settlement of the main questions, and that the nominal parties to the suit were not two communities, like present day states, but two proprietors. The Court of Chancery recognized that its authority was subject to the superior power of the Privy Council.

Penn sued to secure specific performance of an agreement to have a boundary fixed by drawing a line at a distance of twelve miles from Newcastle. The order was issued as prayed for by Penn. The Chancellor was duly impressed with the importance of the case "being for the determination of the right and boundaries of two great provincial governments . . . ; of a nature worthy the judicature of a Roman Senate rather than of a single judge; and my consolation is, that if I should err in my judgment, there is a judicature equal in dignity to a Roman Senate, that will correct it." As to the objection that the court could not enforce its decree in such a case, the Chancellor said, "If they could not at all, I agree it would be in vain to make a decree, and that the court cannot enforce their own decree *in rem* in the present case: but that is not an objection against making a decree in the cause; for the strict primary decree in this court as a court of equity is *in personam*." ¹⁰

II. THE PRIVY COUNCIL

After the century of paternal authority over colonial disputes, this function of the Privy Council has fallen into almost complete disuse. Only three cases have come before the Council since the American Revolution which are at all comparable to the great inter-colonial controversies of the eighteenth century, when the Privy Council exercised original and final jurisdiction even over colonies which were none too eager to have their difficulties smoothed out in this fashion. These cases are the Cape Breton Case of 1846,¹¹ the Pental Island Case, between New South Wales and Victoria in 1872, and the Manitoba and Ontario Case of 1886. In all three cases both parties appeared willingly before the court, and in the last of these

¹⁰ 1 Vesey Sen. 444.

¹¹ 5 Moo. P. C. C. 259.

the judgment of the Privy Council was more like a recommendation to Parliament to establish the proper line than the decree of an independent court. The only other questions of this nature to come before the Judicial Committee of the Privy Council have been on appeal from the courts of Canada and Australia, a right of appeal which the colonists claim the power to limit.

This loss of power in the Privy Council is all the stranger since the act which defined the jurisdiction of the Judicial Committee in 1833, and which has never been repealed, seemed to give it almost unlimited potential jurisdiction: "It shall be lawful for his Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as his Majesty shall think fit, and such committee shall thereupon hear or consider the same and shall advise his Majesty thereon in the manner aforesaid."¹² In spite of the possession of this authority, the government refused to use it in the dispute between South Australia and Victoria in 1894. From Lord Ripon's despatch on this occasion (September 19, 1894), it appears that the prerogative to decide such disputes without the consent of both parties has fallen into abeyance.

How shall we explain the decay of this once great power? From the very beginning informal agreements had been common between the British colonies. The lesson of the American Revolution had been learned, and the government preferred to leave thorny problems of this kind to the colonists themselves, without putting to the test again the very fibre of the Empire. Then, too, the legal basis for the power of the Privy Council is no longer what it was in the eighteenth century. Then the colonial charters were regarded as having come from the King, and what could be more natural than to leave disputes which almost always concerned the meaning of those charters to the royal prerogative of that same King in Council? But now, when colonies were founded under the authority of Parliament, the same solution of the question of inter-colonial disputes was no longer by any means so obvious. There was evident jealousy of the Privy Council, a jealousy which was to show itself in the attempts in South Africa and in Australia to allow no appeals without the consent of

¹² 3 & 4 William IV (1833), Ch. 41; St. R. and O. Revised, 1903, VI, 265.

the colonial authorities. And so Australia and Canada were allowed to set up their own courts for this purpose. As a result, today the Judicial Committee is only a court of limited appeals, on colonial matters, and an entirely voluntary court of arbitration in disputes between colonies which have not arranged some other way of settling their disputes. The lesson of this whole story seems obvious. The judicial settlement of interstate controversies and disputes depends on the closest possible community of sentiment, and the strength of a judiciary is no greater than that of the executive and legislative departments on which it must necessarily depend. The Privy Council exercised great powers in the eighteenth century, precisely because it was not a true court, but an administrative body and, therefore, properly a part of the executive. In the world of larger states, there must be international government before any international court can really achieve the judicial settlement of international disputes.

III. SOUTH AFRICA

Within the British Empire three great self-governing federations have been created since the Revolution. In the Constitution of the last of these, the Union of South Africa, established in 1910, it is noteworthy that no provision has been made for the settlement of inter-state disputes. This is probably due to the fact that the Union is not a real federal government but one which almost obliterates the original lines between the provinces. It is not entirely clear what would happen in case of a provincial misunderstanding. The natural method would be an attempt at arbitration with the consent of both parties. At least in the case of a boundary dispute, the old method of appeal to the Privy Council would also be legally possible. But this method of settlement would not be used without also securing the consent of both parties, and that consent is by no means likely in view of the jealousy of the authority of the Privy Council which is shown in the provision of the Constitution of South Africa,¹² which prohibits appeals from the courts of the Union to the Council except by special leave. While limitation of appeal is probably sub-

¹² Art. 106.

ject to the veto of the King under his prerogative, which of course really means that of the Cabinet, the precedents of the last half century show quite clearly that the independent authority of the Privy Council in such cases is now only a legal fiction, like the power of the royal veto on Acts of Parliament. It is noteworthy that the two methods of settling inter-colonial disputes are not likely to be combined, since the Judicial Committee of the Privy Council refuses to review the results of a voluntary agreement or arbitration.¹⁴ So far, no controversies have arisen among the members of the Union of South Africa to put this problem to the test.

IV. CANADA

In the case of Canada, the British North America Act of 1867 made no general provision for the settlement of inter-colonial disputes, but did provide for arbitration in the division of the common property of Upper Canada and Lower Canada.¹⁵ The most difficult question involved was the disposal of certain school lands in Ontario which had been set aside for the common use of the two provinces. Under this section, three arbitrators were appointed, one by Ontario, one by Quebec, and the third by the Dominion of Canada. Legal questions involved were to be subject to appeal first to the Supreme Court of Canada, and then to the Privy Council. The arbitrators rendered a decision in 1893 which seemed to Quebec unduly favorable to Ontario. Quebec appealed, claiming that the arbitrators had interpreted their jurisdiction too narrowly, not considering the equitable problem involved. The Supreme Court decided in favor of the contention of Quebec on the question of jurisdiction, but on appeal to the Privy Council, the views of the arbitrators were sustained completely.¹⁶ A dispute growing out of this award and concerning the equitable division of funds also arose between Canada and Ontario, which was finally settled in the Canadian courts in favor of the Province.¹⁷

¹⁴ *Att'y Gen. Nova Scotia v. Gregory*, P. C. 11, App. Cases, 229.

¹⁵ Section 142.

¹⁶ 1903 Appeals Cases, 39; 1910 A. C. 509.

¹⁷ 8 *Exchequer Reports*, 174; 10 E. R. 292.

In all other disputes of a quasi-international character, the various provinces either resort to voluntary arbitration, or else give jurisdiction to Canadian courts. In the case of an arbitration, unless they are specifically granted authority to pass on the merits of the case, appeals to the courts are limited to the interpretation of the terms of the specific agreements, or to the determination of questions strictly legal in character. This applies to the Privy Council, just as to any other court of appeals. Ontario gave jurisdiction to the Canadian courts to settle disputes in which she might be involved, as early as 1877;¹⁸ and an act of the Dominion of 1906 provided in general that "when the legislature of any Province of Canada has passed an Act agreeing that the Exchequer Court shall have jurisdiction in cases of controversies, (a) between the Dominion of Canada and each province, (b) between such province and any other province or provinces, which have passed a like Act, the Exchequer Court shall have jurisdiction to determine such controversies. An appeal shall lie in such cases from the Exchequer Court to the Supreme Court."¹⁹

Apart from the two cases which arose under the provisions for arbitration in the Constituent Act, five cases of a quasi-international kind have been decided in Canada:

(1) The boundary between Manitoba and Ontario was fixed by arbitration in 1886. This does not seem to have led to any further litigation.

(2) The second of these controversies involved the articles of Union between Canada and British Columbia of the year 1871 by which the Province had conveyed to the Dominion Government certain public lands to be used in the construction of a railway. Gold was found within this forty mile belt of ceded public land. Were the precious metals included in the public lands ceded? This interesting question was taken up by the courts, presumably under the conception that it was a strictly non-political question of law which involved a technical problem in the interpretation of a very definite contract. The Supreme Court of Canada decided in favor of the Dominion by a vote of five to three that the gold had been ceded with the land. This decision was overturned on appeal to the Privy Coun-

¹⁸ R. S. O. 1877, Ch. 37.

¹⁹ R. S. C. 1906, Ch. 140.

oil under the ancient law of England by which gold and silver mines were not regarded as subject to private ownership but as belonging to the Crown. The rights acquired in land only extended to the land itself and to the baser metals which it contained. In *The Mine's Case*,²⁰ prerogative had been ascribed to the Crown to go in and dig for gold and silver and carry away the precious metals from lands owned either by the Crown or by private individuals. On this analogy, the court held that when British Columbia ceded these lands to which she had by royal grant complete title "the public lands did not include any precious metals, and the Province remained as the representative of the Crown, the owner of the gold and silver." The logic of this position was certainly open to attack, for if British Columbia were to be treated like a private landowner, then she could not alienate the gold and silver because they belonged to the Crown, but if she were the representative of the Crown, possessing complete title, it is hard to see why, even granting that the ancient rule regarding gold and silver had any modern value, she might not alienate under her perfect title, especially to another surely no less important representative of the Crown, the Dominion of Canada. But the Province was treated as a private landowner in one breath and in the next as endowed with some of the attributes of sovereignty, and so managed to eat her cake and save it too. The outcome was not calculated to increase confidence in the infallibility of the august tribunal which decided it.²¹

(3) In 1903 a controversy between Canada and Manitoba regarding certain swamp lands was decided in the Canadian courts in favor of Canada, apparently without leading to further litigation.²²

(4) In 1906 a case was decided by the Privy Council which had been brought by British Columbia from her own courts to secure possession of an island in the harbor of Vancouver. It was decided in favor of Canada on the ground that the island was an imperial military reservation at the time when the British North America Act

²⁰ 1 Plowd. 336.

²¹ *Att'y General of British Columbia v. Att'y General of Canada*, Appeals Cases, 1889.

²² *Att'y General of Manitoba v. Att'y General of Canada*, 8 E. R. 337 (1903).

was passed. The court treated the dispute as one between two sets of Crown officers, rather than as a question between two political communities.²³

(5) In 1910 the Privy Council decided on appeal the case of the Dominion of Canada *v.* Province of Ontario, which had been heard in the Canadian courts under the Act of 1906 cited above.²⁴ Canada had bought from the Indians certain lands in the region which became Ontario. In the treaty with the Indians the Dominion had promised to pay certain sums to them. Since the lands were now a part of the Province, Canada sought to have Ontario assume these obligations. It appeared that the Dominion had acted under its own powers in making the treaty, and not as agent or trustee for the Province. The Dominion could not recover under any definite legal principle and the Privy Council held that as a court, it could not proceed on its own view of what it might simply deem fair or equitable.

V. AUSTRALIA

The Constitution of the third of the great self-governing confederations of the British Empire contains provisions which are evidently closely modelled on those of the United States. The High Court of Australia is given original jurisdiction "in all matters between States, or between residents of different States, or between a State and a resident of another State."²⁵ In the debates on the Australian Constitution speakers supporting it maintained that this provision did not empower a State to sue another without its own consent.²⁶ But this limitation is not so important as it would be in the United States, since Section 78 provides that "the Parliament may make laws conferring rights to proceed against the Commonwealth or a State, in respect of matters within the limits of the judicial power." It is not clear whether there is any important difference between the classes of cases contemplated in the two sec-

²³ *Att'y General of British Columbia v. Att'y General of Canada*, C. R. 1906, A. C. 389.

²⁴ This case came to the Privy Council by special leave. 1910 A. C. 301.

²⁵ Section 75.

²⁶ Quick and Garran, *Constitution of the Australian Commonwealth*, p. 774.

tions, but it is evident that no Australian State may be sued without either its own consent expressed in legislation or under the authority of the General Parliament. And it is probable that this last authority would extend only to such matters as are ordinarily examined by the judiciary between private individuals. Under this section, the Judiciary Act of 1903 provided that any person making any claim against the Commonwealth, whether in contract or in tort, may sue in either the High Court or in the Supreme Court of the State. In the latter case an appeal lies to the High Court.²⁷ In other cases the original jurisdiction of the High Court is conferred directly by the Constitution, and not by parliament in a judiciary act. This was decided in the first case which came before the court,²⁸ and this fact evidently gives to the High Court of Australia an independence which is even greater than that of the Supreme Court of the United States, where even in the matter of original jurisdiction there has been much difference of opinion on this very important point.

The powers of the High Court have been exercised already in six cases between political communities. The importance of these cases is very great since questions came up directly between the Commonwealth and the States which arose in the United States only between private individuals. The general result has been to safeguard and to strengthen federal power against state rights, and under new circumstances the problems and the solutions are strongly reminiscent of the great constitutional decisions of John Marshall. Five of these cases are between the Commonwealth and individual States and only one is a settlement of a controversy between two States.

In *Tasmania v. Commonwealth*²⁹ (1904), the questions arising were stated for the opinion of the High Court with the concurrence of both parties. The Constitution provided that after the imposition of a uniform tariff, the State into which goods finally passed should be credited with the duties and excises paid by goods in the State into which they were first imported or where they were manufactured. Tasmania now sought to have this provision apply to the period

²⁷ Sections 56, 34.

²⁸ *Dalgarno v. Hannah*, 1903. I. C. L. R. I.

²⁹ I. C. L. R. 329.

before the uniform tariff was adopted. She claimed that this was only equitable and in accord with the evident spirit of the Constitution.³⁰ But the court held to a strict construction of the Constitution: "The Court would drift quickly into danger in construing Acts according to what each member took to be sound public policy, obviously a function for legislators, and not for judges."³¹

In *Commonwealth v. New South Wales*, 1906,³² it was decided that a stamp duty on the transfer of property was not valid when the Commonwealth was the purchaser. Such a tax would be an interference with the functions and instrumentalities of the Commonwealth.

In the *King v. Governor of South Australia*, 1907,³³ the Commonwealth intervened in the case of a candidate whose election had been declared void to compel the Governor of the State to issue writs for a new election. The court held that a writ of mandamus could not be issued against the Governor to compel him to take steps to fill the vacancy:

The States are not subordinate to the Commonwealth and the Commonwealth judiciary cannot command the constitutional head of a State to do in that capacity an act which is primarily a State function. . . . The same reasons which prevent a court of law from ordering the sovereign to perform a constitutional duty are applicable to a case where it is alleged that the constitutional head of a State has by his omission failed in the performance of a duty imposed on him as such head of the State.³⁴ This reasoning reminds an American as strongly of *Kentucky v. Denison*³⁵ as the previous decision recalls *McCulloch v. Maryland*.

In 1908 the power of the federation was attacked at the source in the two cases brought by New South Wales, which sought greatly to limit the ability of the Commonwealth to spend its revenues. In the first of these cases³⁶ the State failed to recover a sum which it claimed to have been illegally paid as a pension to a former employee. The court held that this pension was a proper charge for continuing the former post-office department of New South Wales. The

³⁰ Constitution, Sec. 93.

³¹ 1 C. L. R. 349.

³² 3 C. L. R. 807.

³³ 4 C. L. R. 1497.

³⁴ 4 C. L. R. 1512, 1513.

³⁵ 24 Howard 66.

³⁶ 6 C. L. R. 214.

second case between the same parties challenged the ability of the Commonwealth to accumulate the great funds necessary to provide for old age pensions and for the naval program of the Commonwealth. These funds aggregated one million pounds sterling. The Australian Constitution provides that after the first five years, the Parliament of the Commonwealth "may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth." (Sec. 94.) If this section is to be regarded as mandatory, and if the phrase "surplus revenue" and "expenditures" are to be interpreted strictly, the result would be to limit the Australian Commonwealth to ordinary current expenses, thus greatly limiting its powers as a potential nation, and on the other hand to return great sums to a wealthy and populous state like New South Wales to be used for any local purposes which her people might especially desire. The issue between national and state rights was never more sharply drawn.

The plaintiffs naturally insisted on a very strict construction of the words at issue. The balance for each month should be determined, in their view, by deducting from the money actually collected during the month, the amount actually disbursed during the same month. On this view Australia would have a series of fiscal months with an absolutely empty treasury at the end. But the court refused to take this narrow view.⁸⁷ The word "expenditure" must have a meaning large enough to include authorized as well as actual disbursements. The whole reasoning of the court suggests that they were greatly influenced by the practical difficulties which would be placed in the path of the Commonwealth if they insisted on what seems to be the letter of the Constitution.⁸⁸ The broad definition of the word "surplus" in this case was evidently quite as much of a blow to States' rights as that earlier and more famous definition of the phrase "necessary and proper" in the well known decision of Chief Justice Marshall.

⁸⁷ 7 C. L. R. 179.

⁸⁸ The sections in the Constitution which deal with appropriations, 81, 87, 93, 94, are not easy to reconcile with one another. Section 87 seems to contemplate an annual return rather than a monthly return of surplus revenue.

In only one case, the boundary dispute between South Australia and Victoria, the High Court has been called upon to decide a controversy between two States of the Commonwealth. The charter issued under the authority of an Act of Parliament in 1836 fixed the 141st degree of longitude as the eastern boundary of South Australia. This seemed definite enough at the time, but the exact location of this imaginary line was so much in doubt that the disputed region became a home for bandits and a scene of bloodshed. On account of these practical difficulties, a line was surveyed between 1847 and 1850, agreed to by both colonies, and ratified by the home government. It was not until 1869 that an accurate geodetic survey proved that the line was some two miles too far to the west on territory which would have belonged to South Australia. In 1894 the Colonial Secretary refused to allow the matter to come to the Judicial Committee of the Privy Council without the consent of both parties. With the creation of the Commonwealth, the case was brought to the High Court, which, relying on American precedents, refused to disturb an agreement entered into in good faith and unprotested for almost twenty years, even though that agreement had been based upon a scientific error. The extent of the authority of the High Court in such cases was scarcely tested, since the result was entirely negative, and would have been precisely similar had the court refused to assume jurisdiction. The case was carried on appeal to the Privy Council, which now assumed jurisdiction without question, and sustained the judgment of the High Court of Australia. It is interesting to notice that this earliest case of the kind in Australia was decided on grounds almost exactly similar to the earliest controversies between American States.⁸⁹

VI. CONTROVERSIES UNDER THE ARTICLES OF CONFEDERATION

From this survey of the quasi-international controversies within the British Empire we now return to the United States, after the American Revolution made necessary some new constitutional device to replace the Privy Council.

⁸⁹ 12 C. L. R. 667; 18 C. L. R. 115 (1914).

The uncertain geographical knowledge of the times and the conflicting provisions of carelessly worded colonial charters left eleven of the thirteen States engaged in controversies over boundary or jurisdiction. The Articles of Confederation prohibited treaties or alliances among the States without the consent of Congress (Art. 6), and made the United States, in Congress Assembled, "the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever." (Art. 9.) The elaborate method for choosing special courts to settle these disputes under the authority of Congress was probably copied from a similar device in the House of Commons in the case of disputed elections.⁴⁰

Six disputes came before Congress in the period before the adoption of the Constitution.⁴¹

(1) The controversy between New York, Massachusetts, and New Hampshire as to the lands which afterwards became the State of Vermont could not be settled judicially, since the settlers were passionately eager to have their independence from all the claimants. This wise solution was achieved when Vermont was admitted to the Union with the consent of all parties on March 4, 1792.

(2) The dispute between Virginia and Pennsylvania, which had been so bitter as to lead to a solemn protest from Congress in the interests of peace, was settled by an agreement between the two States to the line which forms the present western and southern boundary of Pennsylvania.

(3) New Jersey appeared as the representative of certain of her citizens who claimed lands in western Virginia. Congress settled this dispute in a rather summary fashion in 1784 when it accepted the cession by Virginia of the lands northwest of the Ohio and confirmed the claims of Virginia to her other territory.

(4) Massachusetts claimed certain lands in New York, and the court to pass upon the question was agreed upon, but did not sit, since the two States arranged the dispute amicably.

(5) In the case of South Carolina and Georgia, the extensive

⁴⁰ Jameson, *Essays in the Constitutional History of the United States*, 44, 45.

⁴¹ J. C. Bancroft Davis, in appendix to 131 U. S. 50-63.

western claims of the former were presented. The two parties were unable to agree on a court, and one was selected by Congress, but as in the last case, agreement between the States made further action unnecessary.

In these five cases, contrary to the usual impression, one is struck with the very remarkable success of the method under the Articles, cumbersome though it was, in bringing the parties together, and with the willingness of these infant States to yield something of their supposed rights in the interests of national harmony. There could be no better proof of the presence of real patriotism even in the absence of any strong central government.

In only one case was the method tested completely by adjudication.⁴² This was the important controversy between Pennsylvania and Connecticut regarding the Wyoming lands. On the motion of the State of Pennsylvania, Connecticut was summoned to appear before Congress to proceed according to the Articles of Confederation. The commissioners of the two States were appointed to defend the rights of each, and presented their credentials to Congress, June 24, 1782. In August seven commissioners were agreed to and commissioned. The commission of the court contained the following warning, significant of the full legal power which it possessed: "If any of the parties shall refuse to submit to the authority of the said court, or to appear to defend their claim or cause, the said court shall nevertheless proceed to pronounce sentence or judgment, and the judgment or sentence of the court shall be final and conclusive." But no provision could be made for enforcing the decree, beyond the provision that the judgment of the court should be transmitted to Congress "for the security of the parties concerned."⁴³ The leading argument for Pennsylvania was presented by James Wilson, who was throughout an advocate of the complete authority of Congress to deal conclusively with the whole dispute. The court, sitting at Trenton, decided in favor of Pennsylvania: "We are unanimously of the opinion that the State of Connecticut has no right to the lands in question." (1782.)⁴⁴

⁴² Journals of Congress, III, 685, 688; IV, 40, 42, 47, 59, 64-66, 129-140.

⁴³ *Ibid.*, IV, 65.

⁴⁴ *Ibid.*, IV, 140.

This decree settled the question as far as the two States were concerned, but the individual settlers continued what was practically a civil war, in which one of them, John Franklin, was arrested on a charge of high treason against the State, and in which Timothy Pickering, afterwards Secretary of State of the United States, was kidnapped as a hostage in retaliation. Some of the settlers petitioned Congress for a new decision of the details, but the court was never created and the dispute continued until Pennsylvania passed an act of compromise and conciliation in 1799.⁴⁵

VII. THE CONSTITUTIONAL CONVENTION

With this experience back of them, the authors of the Constitution of the United States provided (1) that the various States might not enter into compacts with one another without the consent of Congress,⁴⁶ and (2) that the judicial power should extend to controversies to which the United States should be a party; to controversies between two or more States; to controversies between a State and citizens of another State; and between a State, or the citizens thereof, and foreign States, citizens or subjects.⁴⁷ In all cases to which a State should be a party the Supreme Court was given original jurisdiction.⁴⁸ The Judiciary Act of 1789 made the original jurisdiction of the Supreme Court in controversies between two or more States exclusive.⁴⁹

The first of these two arrangements forbidding interstate compacts was obviously copied from the Articles of Confederation, while the second which gave so great power to the new Supreme Court was the result of an interesting development in the Constitutional Convention.

The quasi-international jurisdiction of the Supreme Court was not mentioned in Randolph's outline of judicial power as it was first presented to the Convention, but he stated second among the defects

⁴⁵ Appendix, 131 U. S. 50-63.

⁴⁶ Art. I, Sec. 10.

⁴⁷ Art. III, Sec. 2.

⁴⁸ Art. III, Sec. 2.

⁴⁹ Act of Sept. 24, 1789, Chap. 20, 1 Stat. L. 80.

of the existing Confederation the fact "that the federal government could not check the quarrels between States." When his plan was reported from committee, it was moved by Randolph and seconded by Madison, "That the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." With these broad principles, the matter was deferred to the Committee on Detail.

The Committee on Detail was at first inclined to follow the precedent of the Articles of Confederation more closely than was suggested in Randolph's motion. A draft in the handwriting of Wilson, who had already taken part in the inter-state dispute, gave the old jurisdiction of Congress, "in all disputes or controversies now subsisting or that may hereafter subsist between two or more States," to the Senate. Later, seemingly on the motion of Rutledge, the authority of the Senate was limited to controversies regarding territory and jurisdiction, and other controversies were assigned to the Supreme Court. Rutledge gave as one of his reasons for the permanent tenure of judges the fact that they were to adjudge controversies between the United States and one of the States.⁵⁰

On August 24, 1788, the proposed authority to be given to the Senate came up for consideration. Rutledge said this provision was necessary under the Confederation, but would be unnecessary with the national judiciary now to be established. In this position he was supported by several delegates, especially Wilson. Gorham "had doubts as to striking out. The judges might be connected with the States being parties. He preferred leaving such disputes to the Senate." But Rutledge was sustained by a vote of eight to two, and thus, except for necessary verbal changes to be made by the Committee on Style, the present Constitutional provisions were adopted.⁵¹

⁵⁰ Farrand, *Records of the Federal Convention*, I, 19, 22, 224, 238.

⁵¹ Farrand, *Ibid.*, II, 147, 160, 170, 173, 401, 430, 576, 600. Pinckney submitted resolutions to the committee extending the jurisdiction of the Supreme Court to controversies between the United States and an individual State, or the United States and citizens of an individual State. These were inserted in the draft of the committee on August 22. *Ibid.*, II, 342.

From this account it is evident that the Supreme Court was given authority of a very wide kind (1) in controversies regarding territory or jurisdiction, and (2) in other controversies not very sharply defined. We are not helped very much by Madison's remark, that the jurisdiction conferred on the Supreme Court was generally supposed to be constructively limited to the cases of a judicial nature.⁵³ Probably, any close definition was as impossible as it was undesirable.

In the period of debating which followed the publication of the new Constitution, the possibility of suits against the States by individuals or by foreign States, especially to collect debts, was assailed with the greatest bitterness. Marshall, Hamilton, Madison, and indeed all the friends of the Constitution, explained that these suits could never take place without the consent of the States involved in these disputes.⁵⁴ Only Wilson in Pennsylvania, for reasons which are sufficiently evident in the light of his own recent success, frankly defended compulsion to secure the execution of judgments against States.⁵⁵ Hamilton sought diligently to allay the fears which had been aroused over this matter: "To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident it could not be done without waging war against the contracting State; and to ascribe to the federal courts by mere implication, and in destruction of preëxisting rights of the State Governments, a power which would involve such a consequence would be altogether forced and unwarrantable."⁵⁶ But the context of these words show clearly that their author was thinking only of suits by individuals or in the name of individuals who might assign their debts to some State for collection. The power of the Supreme Court to settle *bona fide* controversies between two States was described in the broadest terms⁵⁶ and was approved generally,⁵⁷ even by such men as Mason in Virginia. The other possibility of

⁵³ Farrand, Records, II, 430.

⁵⁴ Elliot's Debates, 2d ed., III, 543, 555, 557, 566, 567; Federalist, 39, 80.

⁵⁵ Elliot's Debates, II, 490, 491.

⁵⁶ Federalist, 81.

⁵⁷ *Ibid.*, 81.

⁵⁸ Elliot's Debates, III, 523, 532.

suits between the United States and one of the States seems to have been entirely overlooked, probably because it is not specifically granted in the words of the Constitution, but only implied in the phrase which speaks of "controversies to which the United States shall be a party."

VIII. CLASSES OF CASES BEFORE THE SUPREME COURT OF THE UNITED STATES

The framers of the Constitution evidently expected the power granted to the Supreme Court to do great things in lessening the bitterness of inter-state disputes. Hamilton had said in the *Federalist*: "There are many other sources, besides interfering claims of boundaries, from which bickerings and animosities may spring up among the members of the Union. . . . Whatever practices have a tendency to disturb the harmony between the States are proper subjects of federal superintendence and control."⁵⁸ One might have prophesied that the number of these cases would be great in the early days of the government, but that as all the old disputes were laid to rest and geographical knowledge became more exact, the new powers of the judiciary would be less and less often called into use. The result has been precisely the reverse. Since the adoption of the Constitution, twenty-six distinct inter-state controversies have come before the Supreme Court. Of these, only six came before the Civil War.⁵⁹ Eleven have been settled since the year 1900. It was not until 94 years after the adoption of the Constitution that the court was called upon to consider any other than a boundary dispute. The year 1901 saw the court considering such a case for the first time. Almost exactly half a century elapsed after the appointment of the first court before a decree was actually handed down which settled an inter-state dispute.

⁵⁸ *Federalist*, 81.

⁵⁹ *New York v. Connecticut* (1799), 4 *Dallas* 1, 3, 6; *New Jersey v. New York* (1831), 5 *Peters* 461, 5 *Peters* 284, 6 *Peters* 323, 755; *Rhode Island v. Massachusetts* (1838-1840), 7 *Pet.* 651, 11 *Pet.* 226, 12 *Pet.* 657, 755, 13 *Pet.* 23, 14 *Pet.* 210, 15 *Pet.* 233, 4 *Howard* 591; *Missouri v. Iowa* (1849), 7 *Howard* 659, 10 *Howard* 1; *Florida v. Georgia* (1854), 11 *Howard* 293, 17 *Howard* 478; *Alabama v. Georgia* (1860), 23 *Howard* 505.

In addition to the twenty-six controversies between States which have come before the court, some of them repeatedly and in different forms, the Supreme Court has settled three suits brought by the United States against individual States, exercising this part of its jurisdiction for the first time in the case of the *United States v. North Carolina* in 1890. In this case the court assumed jurisdiction without special discussion. The case involved the question of interest on bonds which were overdue. The court decided in favor of the State that it could not be compelled to pay interest after the maturity of the bonds. This was followed by a suit against Texas in 1896 in which the question of jurisdiction was definitely considered. The court assumed full jurisdiction and decided a disputed boundary in favor of the United States on grounds essentially similar to those on which early disputes between States had already been adjudicated. The third case of this kind was *United States v. Michigan* in 1902. Certain lands had been granted to the State to aid in the construction of the important St. Mary's Canal. When this canal was turned over to the national government, the State also lost control over the unused portion of the lands. This case was virtually an interpretation of the terms of a definite contract.⁶⁰ In spite of a dictum in *United States v. Lee* in 1882,⁶¹ the court has consistently refused to allow suits against the United States without its own consent, even when a Cabinet officer has been the nominal party to the suit.⁶² The quasi-international jurisdiction of the court has therefore been limited to twenty-nine great controversies, of which the majority have been settled since the year 1890.

The Supreme Court has never been called upon to exercise its jurisdiction in cases between one of the States and a foreign State. Foreign sovereigns may sue in the courts of the United States, but,

⁶⁰ *United States v. North Carolina*, 136 U. S. 211; *United States v. Texas*, 143 U. S. 621; *United States v. Michigan*, 190 U. S. 196.

⁶¹ *United States v. Lee*, 106 U. S. 196. See also similar dictum in *Mississippi v. Johnson*, 11 Howard 293. *South Carolina v. U. S.*, 199 U. S. 437, and *United States v. Louisiana*, 123 U. S. 32, are interesting examples of cases between the United States and a State, coming to the Supreme Court on appeal after being brought in the Court of Claims against the United States by its own consent.

⁶² *Kansas v. United States*, 204 U. S. 331; *Minnesota v. Hitchcock*, 189 U. S. 373; *Louisiana v. Garfield*, 211 U. S. 70; *New Mexico v. Lane*, 243 U. S. 53.

according to a well-known principle of international law, may not be sued without their own consent. According to this same principle it probably follows that they could not sue an American State without first securing its consent as well. This was stated frequently in the debates at the time of the adoption of the Constitution, but has, of course, never been settled by a decision of the court. It is even open to question whether the Supreme Court would assume jurisdiction in a case between a State of the United States and a foreign sovereign, even though both parties gave their consent.

The twenty-six great controversies between States fall into four distinct groups when classified according to the subject-matter in dispute:

(1) Boundary disputes involving the judicial interpretation of charters, laws, and agreements. Ten of the controversies, including the first five to come before the court, belong to this class, in which the problem concerns the interpretation of definite legal documents.⁶³

(2) Boundary disputes along rivers and waterways, largely due to the peculiarly shifting character of many American rivers. There have also been ten controversies of this kind, which may largely be regarded as the gift of the Father of Waters and his tributaries to American jurisprudence. These cases belong to the period since the opening of the West has added to land values and made vital controversies over comparatively small areas.⁶⁴

(3) Controversies in which one State seeks to prevent an injury

⁶³ *New York v. Connecticut* (1799), 4 Dallas 1, 3, 6; *New Jersey v. New York* (1831), 3 Peters 461, 5 Pet. 284, 6 Pet. 323; *Rhode Island v. Massachusetts* (1838-40), 7 Peters 651, 11 Pet. 226, 12 Pet. 657, 12 Pet. 755, 13 Pet. 23, 14 Pet. 210, 15 Pet. 233, 4 Howard 591; *Missouri v. Iowa* (1849), 7 Howard 659, 10 Howard 1; *Florida v. Georgia* (1854), 11 Howard 293, 17 Howard 478; *Virginia v. West Virginia* (1870), 11 Wallace 39; *South Carolina v. Georgia* (1876), 93 U. S. 4; *Virginia v. Tennessee* (1893), 148 U. S. 503, 158 U. S. 267; *Maryland v. West Virginia* (1910), 217 U. S. 1, 217 U. S. 577, 225 U. S. 1; *North Carolina v. Tennessee* (1915), 235 U. S. 1, 240 U. S. 652.

⁶⁴ *Alabama v. Georgia* (1860), 23 Howard 505; *Missouri v. Kentucky* (1870), 11 Wallace 395; *Indiana v. Kentucky* (1890), 136 U. S. 479; *Nebraska v. Iowa* (1891), 143 U. S. 359; *Iowa v. Illinois*, 147 U. S. 1, 202 U. S. 59; *Missouri v. Nebraska* (1904), 196 U. S. 23; *Louisiana v. Mississippi* (1905), 202 U. S. 1; *Washington v. Oregon* (1908), 211 U. S. 127; *Missouri v. Kansas* (1908), 213 U. S. 78; *Arkansas v. Tennessee* (1918), 246 U. S. 158.

at the hands of another State. There have been three cases of this kind, in each of which the plaintiff State has appeared in the interest of a large number of its citizens as "*parens Patriæ*." In *Louisiana v. Texas*, which came before the court in 1899, Louisiana complained against a quarantine regulation of Texas on the ground that it unjustly discriminated against the interstate commerce of the citizens of Louisiana. The Supreme Court refused to assume jurisdiction, maintaining that the quarantine regulation was proper in itself, and being unwilling to examine either the motives of the legislature of Texas in passing it or the possible maladministration of the law by the officers of the defendant State. The court seemed to have doubts whether this was genuinely a controversy between two States within the meaning of the Federal Constitution. A decision in favor of Louisiana would certainly have been very sweeping in its implications, as it would have involved the nullification of the law of a neighboring State and so have combined the two greatest powers of the court. But in *Missouri v. Illinois*, in 1901, and again in *Kansas v. Colorado*, in 1902, the court assumed full jurisdiction. In the first of these cases, Missouri complained against the pollution of the Mississippi River by sewage from Chicago. Kansas complained because Colorado was diminishing the flow of the Arkansas River by allowing private citizens to use the water for irrigation. In neither case did the court find an injury sufficient to warrant the exercise of the full power which it claimed. In the Missouri case the court said:

It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must be conceded that if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them.⁶⁵

⁶⁵ *Kansas v. Colorado*, 185 U. S. 125, 206 U. S. 46; *Missouri v. Illinois*, 180 U. S. 208, 200 U. S. 496, 202 U. S. 598; *Louisiana v. Texas*, 176 U. S. 1. To these decisions should probably be added *Georgia v. Tennessee Copper Co.* (1907), 206 U. S. 230, which was virtually a suit between two States. To this same class belongs the interesting controversy between New York and New Jersey, argued before the court November 8, 1918, and still undecided. New York seeks to prevent the pollution of New York harbor by sewage from Passaic.

(4) Controversies involving the payment of pecuniary claims. There have been three decisions which properly fall under this head. In *New Hampshire v. Louisiana*, in 1883, the court refused to assume jurisdiction, not because money was involved, but because the plaintiff State could not show a clear title to the bonds, making the case a mere attempt to evade the Eleventh Amendment. But in *South Dakota v. North Carolina*, where certain bonds had been given to the plaintiff, the court assumed jurisdiction, decided in favor of the plaintiff by a close vote, and even suggested for the first time a method by which its decision might be enforced. Fortunately this suggestion was not put to the test, since the defendant paid the claim to South Dakota. Finally came the long drawn out case involving the debt of Virginia, which was decided in favor of Virginia and against West Virginia, a decision which involves the payment of more than twelve millions of dollars to the plaintiff State. At the time when this paper is being written (June, 1919), the final steps are being taken by West Virginia to settle this old debt in accordance with the adverse decision of the court.⁶⁶

The suit against West Virginia was commenced in 1906 and the judgment rendered in 1915. The results are thus summarized by Mr. Justice White:

The judgment which resulted was for \$12,393,929.50, with interest, and it was based upon three propositions specifically found to be established: First, that when territory was carved out of the dominion of the State of Virginia for the purpose of constituting the area of the State of West Virginia, the new State, coincident with its existence, became bound for and assumed to pay its just proportion of the previous public debt of Virginia. Second, that this obligation of West Virginia was the subject of contract between the two States, made with the consent of Congress, and was incorporated into the Constitution by which West Virginia was admitted by Congress into the Union, and, therefore, became a condition of such admission and a part of the very governmental fiber of that State. Third, that the sum of the judgment rendered constituted the equitable proportion

⁶⁶ *New Hampshire v. Louisiana* (*New York v. Louisiana*) (1883), 108 U. S. 76; *South Dakota v. North Carolina* (1904), 192 U. S. 286; *Virginia v. West Virginia* (1906-1918), 206 U. S. 290, 209 U. S. 514, 220 U. S. 1, 222 U. S. 17, 231 U. S. 89, 234 U. S. 117, 238 U. S. 202, 241 U. S. 531, 246 U. S. 565.

of this debt due by West Virginia in accordance with the obligations of the contract.⁶⁷

This case is especially noteworthy because the bonds were largely held by private individuals who had already exempted Virginia from paying their claims, because a large part of the judgment was for interest on the bonds, and because it was conceded that the judgment could not be paid without the exercise of the power of taxation. West Virginia has passed a debt settlement bill (1919) in which she provides for direct taxes to meet the debt. But for a time it looked as if some form of compulsion would be necessary. The court did not hesitate to meet this possibility squarely. It recognized a threefold obligation to carry out the judgment of the court: (1) the duty of West Virginia to provide for the debt by appropriate taxation; (2) the power and the duty of Congress to make provision for enforcing the terms of the contract between the two States, either by legislation which should apply to West Virginia directly, or by legislation which would give the court direct authority to enforce its judgment; (3) the duty of the court to secure the enforcement of its own judgment under existing legislation. In the hope that one of the first two methods would be used, the court did not consider fully the methods by which it might carry out its own decree, but it suggested that this might be done either by mandamus to the legislature of West Virginia, or perhaps even by the direct exercise of the judicial power within the limits of the State. Happily, the action of West Virginia has cut the Gordian knot and relieved the court from what would certainly have been a trying and embarrassing situation. But the fact that the Supreme Court has never been compelled to resort to force in its inter-state decrees, does not lessen the significance of a decision in which it claimed both for Congress and for itself such sweeping powers. When we compare the Supreme Court with the Privy Council in this respect, and especially when we compare the dicta of a Southern Chief Justice with those of his predecessor from Maryland, it is evident that the United States has become a nation, while the British Empire has become a group of independent States.

⁶⁷ 246 U. S. 565.

The Supreme Court has today behind its decrees the full force of national unity. It is a long cry from *Kentucky v. Denison* to *Virginia v. West Virginia*.⁶⁸

IX. THE JURISDICTION AND PROCEDURE OF THE SUPREME COURT

(1) The original jurisdiction of the Supreme Court cannot be enlarged either by the court itself or by Congress,⁶⁹ although, curiously enough, a part of it has been given from the earliest times to inferior courts.⁷⁰ But, on account of the weight and dignity of the questions involved, it seems safe to say that the quasi-international jurisdiction of the Supreme Court could never be assigned to any lower court.⁷¹

(2) The word "State" is to be interpreted strictly, and does not include such political communities as Indian tribes, territories, or the District of Columbia.⁷²

(3) The authority of the court in the class of cases which we are considering is derived directly from the Constitution. This was a matter of considerable doubt in the early cases, but in all the recent decisions it has come to be assumed that the original jurisdiction of the court is not dependent on any Act of Congress for its existence, though Congress may define the procedure to be followed, and the methods to be used in enforcing the decrees of the court. In the absence of specific legislation by Congress, the court may exercise its original jurisdiction in such a fashion as to promote simplicity of procedure and real justice. "An omission to legislate could not deprive the court of the jurisdiction conferred."⁷³

(4) A State may be sued without its own consent, and if the

⁶⁸ 246 U. S. 565.

⁶⁹ *United States v. Yale Todd*, 13 Howard 52, note; *Marbury v. Madison*, 1 Cranch 137; *Florida v. Georgia*, 17 Howard 504.

⁷⁰ 111 U. S. 449, 123 U. S. 32; 4 Blatchf. 50.

⁷¹ 220 U. S. 27.

⁷² 1 Wash. Terr. 269, 5 Peters 1, 2 Cranch 445.

⁷³ 17 Howard 478, 143 U. S. 621, 162 U. S. 1. No one has stated the principle of the independence of the original jurisdiction of the court more clearly than Taney in *Kentucky v. Denison*: "In all cases where original jurisdiction is given by the Constitution, this court has authority to exercise it without any further Act of Congress to regulate its process or confer jurisdiction." 24 Howard 98.

defendant State does not appear, a *subpœna* is issued against it for its appearance. If the State does not appear, the suit will proceed against it *ex parte*. No coercive measures are used against it to compel its appearance, although in the case of *New Jersey v. New York* the *subpœna* was issued with a small monetary penalty in case of failure to appear.⁷⁴

(5) The procedure is that of a court of chancery used in a liberal spirit to suit the circumstances of the case.⁷⁵ Costs in boundary disputes are ordinarily divided between the contesting States, unless the plaintiff is clearly in the wrong. Commissioners are frequently appointed to apply the legal principles in the determination of an exact boundary.

(6) A State may appear not only when its own property is directly involved, but also as the representative of its citizens, in its sovereign capacity, as *parens patriæ*. But when this is done the interests of a large general body of citizens must be involved. The State may not replace a few individuals as the plaintiff in a case in such a fashion as to evade the Eleventh Amendment. The interests of the State as a political community must be really involved.⁷⁶

⁷⁴ *New Jersey v. New York*, 3 Peters 465-6.

⁷⁵ *Rhode Island v. Massachusetts*, 14 Peters 210.

⁷⁶ This question of the right of a State to sue in a controversy over lands when it did not own the property involved arose in the earliest cases. *Fowler v. Miller* (1799), 3 Dallas 411, was the first case involving the jurisdiction of the Supreme Court in interstate disputes. Fowler claimed land under a Connecticut grant in a region also claimed by New York. New York tried to remove the case from the Circuit to the Supreme Court on the ground that it was virtually a suit between States subject to the exclusive jurisdiction of the higher court, and because she said that a fair trial could not be secured in the Circuit Court for the District of Connecticut. This application was denied, the court distinguishing between claims of private individuals like Fowler and the claims of States to the territory in question. The States were not regarded as either nominally or substantially parties to the suit. But in the course of his opinion Mr. Justice Washington gave the following significant hint: "The State of New York might, I think, file a bill against the State of Connecticut, praying to be quieted as to the boundaries of the disputed territory; and this court, in order to effectuate justice, might appoint commissioners to ascertain and report those boundaries."

Acting on this wise hint, a suit was brought at the next term of the court by New York against Connecticut, in which the plaintiff State sought to prevent Connecticut or Fowler by injunction from claiming the lands in question. The

X. SUBSTANTIVE RULES OF LAW IN INTERSTATE CASES

The full significance of this great series of twenty-nine cases is well stated by Mr. Justice Brewer in the case of *Kansas v. Colorado*:

Whenever the action of one State reaches through the agency of natural laws into the territory of another State, the question of the Attorney General of New York cited *Penn v. Lord Baltimore*, and argued very convincingly that this was precisely the kind of a case in which the Constitution expected the Supreme Court to assume jurisdiction. "The bill," he said, "is emphatically a bill of peace; since, considering the parties to the principal controversy, without this remedy the consequences upon the public tranquillity can hardly be conjectured." This line of reasoning appealed strongly to Justice Patterson, who said: "If the grantees of New York are thus evicted, they will bring suits in New York on their possession. But where will this feud and litigation end? It is difficult and painful to conjecture, unless this court can, under the Constitution, lay hold of the case to decide the question of boundary, which will be the decision of all the appendages and consequences." But in spite of the evident weight of these contentions, the court was evidently afraid to assume the necessary jurisdiction, and decided that New York was not a party to the suit since she did not directly own the land in question. (*New York v. Connecticut*, 4 Dallas 1.)

The result of this early failure was to throw the States back on voluntary agreements, and to reduce the quasi-international jurisdiction of the Supreme Court to a nullity. More than thirty years passed before it first assumed jurisdiction in a boundary dispute, in the case of *New Jersey v. New York*, 5 Peters 284. It was left to the bold genius of John Marshall to assume this great constitutional power, as he had earlier in his career assumed the power to declare the laws of Congress unconstitutional. Marshall said in this case that, although Congress had passed no act for the special purpose of prescribing the mode of procedure in suits instituted against a State, the court might exercise its original jurisdiction "under the authority conferred by Congress and the existing Acts of Congress."

New Jersey v. New York was never pushed to a conclusion, so that the case of *Rhode Island v. Massachusetts* (12 Peters 657), decided in 1838, is the first in which the Supreme Court actually settled a controversy between two States. The most grave objection against the jurisdiction of the court was that the question of boundary was a political question in which the court would be unable to enforce its decree. This argument was urged with great force by Daniel Webster in behalf of Massachusetts, but did not convince the majority of the court, which assumed full jurisdiction, in spite of the dissent of Chief Justice Taney. These two cases laid at rest any question as to the ability of the court to settle controversies regarding boundaries, even when State property is not directly involved. Since that time, as we have seen, the Supreme Court has frequently recognized that the State "has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." (Justice Holmes in *Georgia v. Tennessee Copper Co.* (1907), 206 U. S. 230.)

extent and the limitations of the rights of the two States becomes a matter of justiciable dispute between them, and this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them. In other words, through these successive disputes and decisions, this court is practically building up what may not improperly be called interstate common law.⁷⁷

In the light of this dictum, what principles, either taken from other branches of the law or created by the exigencies of new situations, have become parts of this interstate common law in the United States? From an examination of the controversies which we have reviewed, a few great substantive rules appear to have gained this new dignity, and may be at least tentatively stated as established principles of interstate law:

(1) Long acquiescence in a given boundary establishes a valid title by usage and prescription which may not be disturbed later on technical grounds. The length of time necessary to complete this process varies in different cases, but in general it may be said that no title may be easily questioned on technical grounds after important private rights exist under it which would be disturbed by a change of sovereignty.⁷⁸

(2) Although States may not enter into compacts with one another without the consent of Congress, consent may be implied as well as express, and the consent of Congress may give validity to a compact long after the compact has been made. Such compacts will be regarded as binding.⁷⁹

(3) Compacts between States do not limit the powers of Congress. Thus a previous compact between two States does not change the full right of Congress to regulate commerce on navigable streams.⁸⁰

⁷⁷ *Kansas v. Colorado*, 206 U. S. 98.

⁷⁸ "When a line has been once run and has afterwards been acquiesced in for a long number of years by two States, the court will establish it, although it varies from the original course in the charter, and although it may not be a straight or uniform line." (*Maryland v. West Virginia*, 217 U. S. 19.)

⁷⁹ Constitution of the United States, Art. I, Sec. 10; *Virginia v. West Virginia*, 11 Wallace 39; *Virginia v. Tennessee*, 148 U. S. 503.

⁸⁰ *South Carolina v. Georgia*, 93 U. S. 4.

(4) When a river is given as the boundary between two States, each has jurisdiction to the center of the main navigable channel.⁸¹ But when a channel changes from one side of an island to the other, the island remains within the same jurisdiction as before.⁸²

(5) As between private parties, a sudden change in the course of a stream (avulsion) leaves the boundary where it was, but gradual changes by erosion and accretion also change the boundary by carrying it in the middle of the main navigable channel.⁸³

(6) If the bank of a stream is specifically given as the boundary, it is the bank at the usual height of the stream without regard to sudden freshets or unusual droughts.⁸⁴

(7) When two States lie on different parts of a non-navigable stream, each is entitled to an equitable division of the water for purposes of irrigation. The common law principle of the right of owners on streams to the undisturbed flow of the water would of course prevent any extensive systems of irrigation. The principle of equitable division, as stated by the Supreme Court in the case of *Kansas v. Colorado*,⁸⁵ is an elastic principle, like the "rule of reason," capable of interpretation in accordance with changing public needs. It seems to mean that water may be taken in such a way as to do the greatest good to the greatest number. In similar cases the court would probably balance the benefit to the settlers upstream against losses down stream, though serious injury to vested interests down stream would probably be regarded as violations of equity.

The powers of the Supreme Court to settle disputes between States, taken up reluctantly and with extreme caution, have kept

⁸¹ *Iowa v. Illinois*, 147 U. S. 1; *Arkansas v. Tennessee*, 246 U. S. 158.

⁸² *Indiana v. Kentucky*, 136 U. S. 479; *Washington v. Oregon*, 211 U. S. 127.

⁸³ *Arkansas v. Tennessee*, 246 U. S. 158; *Nebraska v. Iowa*, 143 U. S. 359; *Missouri v. Nebraska*, 196 U. S. 23.

⁸⁴ *Alabama v. Georgia*, 23 Howard 505. Although the boundary of Kentucky reaches "low" water mark on the north shore of the Ohio, and though Maryland reaches "low" water mark on the south shore of the Potomac, a careful reading of the cases involved shows that these are not really exceptions to the rule laid down in *Alabama v. Georgia*. The word "low" is used with reference to freshets rather than to more unusual droughts. *Handley's Lessee v. Anthony*, 5 Wheaton 374; *Maryland v. West Virginia*, 217 U. S. 1.

⁸⁵ *Kansas v. Colorado*, 185 U. S. 125, 206 U. S. 46.

pace with the development of national power, have broadened in their scope and become more elastic with the years, and without the necessity to use force or even to hint at it except in the rarest cases, have become an example to the nations of the constructive possibilities of reason in a world of ever-recurring controversies and disputes. There are few more significant developments in the history of modern jurisprudence.

PUNISHMENT OF OFFENDERS AGAINST THE LAWS AND CUSTOMS OF WAR

By JAMES W. GARNER

Professor of Political Science, University of Illinois

THE treaty of peace between Germany and the Allied and Associated Powers, signed at Versailles on the 28th of June, 1919, formally sanctioned the principle that individuals belonging to the armed or naval forces of the adversary, as well as his civil functionaries, are responsible under military law for offenses against the laws and customs of war and may be tried and punished for such offences.

The treaty declares that Germany recognizes "the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war." It adds: "Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies."

The treaty further requires Germany to hand over to the Allied and Associated Powers, or to such of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office, or employment which they held under the German authorities, and to furnish "all documents and information of every kind, the production of which may be considered necessary to the full knowledge of the incriminating facts, the discovery of offenders, and the just appreciation of responsibility."¹

This appears to be the first treaty of peace in which an attempt

¹ Articles 228, 230. Identical provisions are contained in the treaty with Austria (Arts. 173, 175), but there appear to be no such stipulations in the treaty with Bulgaria.

has been made by the victorious belligerent to enforce against the defeated adversary the application of the principle of individual responsibility for criminal acts committed during war by members of his armed forces against the persons or property of the other party.²

It is proposed in this paper to examine the general principle of the criminal responsibility of individual violators of the laws of war, and to consider some of the questions that have already risen and are likely to arise in connection with the attempt to apply it in practice against Germans charged with having committed such offences.

The principle that the individual soldier who commits acts in violation of the laws of war, when those acts are at the same time offences against the general criminal law, should be liable to trial and punishment by the courts of the injured adversary, in case he falls into the hands of the authorities thereof, has long been maintained by some writers, and in 1880 it was expressly affirmed by the Institute of International Law. Article 84 of its Manual of the Laws of War on Land, adopted at Oxford in that year, declared that if any of the rules thereof were violated, "the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are." It was further added that "offenders against the laws of war are liable to the punishments specified in the penal or criminal law," whenever the person of the offender could be secured.³

The many shocking acts committed by German soldiers in Belgium and France during the late war in violation of the laws and customs

² The late Professor Renault, speaking before the French General Prison Society in 1915, referred to a suggestion that he had received, to the effect that in the treaty of peace a clause should be inserted requiring the delivery up of the principal offenders against the laws of war. Regarding the suggestion, M. Renault said: "I do not see how a government, even if conquered, could consent to such a clause; it would be the abdication of all its dignity; moreover, almost always, it is upon superior order that infractions of the law of nations have been committed. I have found the proposal excessive, though I understand the sentiment that inspired it. I cite it because it shows well to what point men, animated by justice and shocked by what has taken place, desire that the monstrosities of which French and Belgians have been victims should not go unpunished." 25 *Rev. Gén. de Droit Int. Pub.*, p. 25; also 39 *Rev. Pénitentiaire*, p. 425.

³ *Annuaire de l'Institut*, 1881-1882, p. 174.

of war⁴ revived interest in the subject, and already there is an extensive literature dealing with it.⁵ All writers who have discussed the subject are in agreement that certain acts committed by soldiers are none the less criminal because they are committed during war. Such are acts of pillage, theft, incendiarism, violence, rape, robbery, assassination, maltreatment of prisoners and the like. The late Pro-

⁴The report of the Peace Conference Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties contains a catalogue of the breaches of the laws and customs of war committed by the armed and naval forces of the German Empire and their allies during the late war. The list embraces 32 categories of acts, many of which were crimes under the common law. The report is printed in English by the Carnegie Endowment for International Peace and is reprinted herein, *infra*, p. 95.

⁵See, especially, Renault, "de l'Application du Droit Pénal aux faits de Guerre," 25 *Rev. Gén. de Droit Int. Pub.* (1918), pp. 5 ff., also his address before the *Société Générale des Prisons*, 39 *Rev. Pénitentiaire*, pp. 406 ff. (1915); Pic, "Violations des Lois de la Guerre, Les Sanctions Nécessaires," 23 *Rev. Gén.*, pp. 261 ff. (1916); Feraud-Giraud, *Recours en Raison des Dommages Causés par la Guerre*; Dumas, *Les Sanctions Pénales des Crimes Allemands* (1916); Meringhac, "Sanctions des Infractions au Droit des Gens Commises au Cours de la Guerre Européenne," 24 *Rev. Gén.* (1917), pp. 10 ff.; Bellot, "War Crimes, Their Prevention and Punishment," *Grotius Society, Pubs.* II, 46; Fauchille, *L'Evacuation des Tiers, occupés par l'Allemagne dans le Nord de la France*; Tchernoff, *Revue Politique et Parlementaire*, July, 1915; Nast, "Les Sanctions Pénales de l'Enlèvement par les Allemands du Matériel Industrielle en Territoires français et belges occupés par leur troupes," 26 *Rev. Gén.* (1919), pp. 111 ff.; L. D., "Des Sanctions à établir pour la répression des Crimes commis par les Allemands en violation du Droit des Gens et des Traités Internationaux," 44 *Clunet*, pp. 125 ff.; and the report of MM. Larnaude and Lapradelle entitled *Examen de la Responsabilité pénale de l'Empereur Guillaume II d'Allemagne*, 46 *Clunet*, pp. 131 ff., and the report of the Peace Conference Commission on the Responsibility of the Authors of the War. The subject was discussed at length by a group of distinguished French jurists at several sessions of the *Société Générale des Prisons* in 1915 and 1916. See, especially, the addresses of Garraud, Larnaude, Garçon, Renault, Clunet, Pillet and Weiss. English and American authorities, of course, are not lacking who have supported the doctrine of individual criminal responsibility. Both Prime Ministers Asquith and Lloyd-George publicly declared that Germans guilty of committing criminal acts against British soldiers would, in case they fell into the hands of the authorities, be tried and punished. Sir Frederick Smith, while Attorney-General of England, also advocated the trial and punishment of such persons. See, also, the remarks of Mr. E. P. Wheeler, an American lawyer, in the Proceedings of the American Society of International Law, 1917, p. 36, and of Professor T. S. Woolsey, *ibid.*, 1915, pp. 62 ff.

fessor Renault aptly remarked that most acts of war, when the element of intent is eliminated, contain all the essentials of criminal acts, and if they are forbidden by the law of nations they are analogous to ordinary crimes and may be punished as such. What deprives such acts of the element of criminality is their conformity to the rules of international law. That is to say, the killing by a soldier of a person belonging to the enemy's forces, or the taking of private property in occupied territory, are lawful acts of war only when they are done in the manner and subject to the conditions prescribed by international law; otherwise they are murder or theft, as the case may be, and their authors are liable to punishment.⁶ In short, soldiers, as well as civilians, may commit crimes during war, and it would be extraordinary to hold that they are protected by their uniform against trial and punishment. As a general rule, a soldier cannot be held criminally responsible for acts committed by him in the line of duty during war when those acts are authorized by the generally accepted laws of war; such acts are not crimes, but lawful acts of war; but if they are forbidden by the generally recognized laws and usages of war, they are not legitimate acts and they may be crimes under the common law. The United States Supreme Court has affirmed that soldiers are not liable for acts done by them in accord with the usages of civilized warfare and by military authority.⁷ It would seem to follow logically that the authors of acts in violation of these usages may be held personally responsible.⁸

Most of the war manuals and military criminal codes recognize that certain acts committed by soldiers in time of war are ordinary crimes, and provide for the punishment of such acts whenever the offenders fall into the hands of the authorities. Article 249 of the French Code of Military Justice, for example, declares that "every individual who, in the zone of operations, despoils a wounded, sick or dead soldier shall be punished by *réclusion*, and every individual who commits violence on such a soldier shall be put to death." The

⁶ Article cited in 25 *R. G. D. I. P.*, p. 10. Compare, also, Garcon, 39 *Revue Pénitentiaire*, p. 479.

⁷ *Dow v. Johnson*, 100 U. S. 158, and *Friedland v. Williams*, 131 U. S. 416.

⁸ Compare an article by C. A. H. Bartlett entitled "Liability for Official War Crimes" in 35 *Law Quar. Rev.* (1919), p. 186.

provisions of the criminal code relative to murder, assault and assassination are declared to be applicable in such cases. The term "every individual" is certainly broad enough to include members of the enemy's forces who commit such acts in the zone of operations, whether they are military persons or not.

The American Rules of Land Warfare (1914) provide punishment for acts of pillage and maltreatment of the dead and wounded (Art. 112), for intentionally inflicting additional wounds upon an enemy already disabled, or for killing such an enemy, *whether he belongs to the army of the United States or is an enemy captured after having committed the misdeed* (Art. 181),⁹ for the wanton destruction of property (Art. 340), and for committing any one of a long list of acts, such as the use of poison, refusal of quarter, killing of wounded, maltreatment of dead bodies, ill-treatment of prisoners and of inhabitants of occupied territory, and many other offences (Art. 366). Crimes punishable by all criminal codes, such as arson, murder, theft, burglary, rape, and the like, if committed by an American soldier in a hostile country against its inhabitants, are declared to be punishable not only as at home, but, in all cases in which death is not inflicted, the severer punishment shall be preferred (Art. 378). Except as to the wounding of disabled soldiers, no express mention is made, however, of the punishment of offenders belonging to the enemy's forces, but there is little doubt that every person guilty of committing such acts against American soldiers would, if apprehended, be punished equally with those belonging to the American army.¹⁰ American practice during the Civil War was in accordance with this view.¹¹

The British Manual of Military Law likewise enumerates a long

⁹ Compare Art. 71 of Lieber's Instructions for the Government of the Armies of the United States in the Field.

¹⁰ Art. 71 declares in fact that "a prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured and for which he has not been punished by his own army."

¹¹ As is well known, William Wirz, commandant of the Confederate prison at Andersonville, was tried by a military commission of the United States after the close of the war, on the charge of brutal treatment of Federal prisoners. He was convicted and hanged on November 10, 1865. Rhodes, *History of the United States*, Vol. V, p. 506.

list of war crimes which may be punished as such, irrespective of whether they are committed by British soldiers or those belonging to the enemy's forces, except that those may not be punished for such violations of the recognized rules of warfare, as are ordered by their government or commander (Art. 443).

The German *Kriegsbrauch im Landkriege* is none the less explicit on this point. It declares that the inhabitants of occupied territory must not be injured in life, limb, honor or freedom; that every unlawful killing, every bodily injury due to fraud or negligence, every insult, every disturbance of domestic peace, every attack on family, honor, or morality, and generally, every unlawful and outrageous attack or act of violence, are just as strictly punishable as though they had been committed against the inhabitants of one's own land. It expressly prohibits all aimless destruction, devastation, burning, and ravaging of the enemy's country, and declares that the soldier who does such acts is "an offender according to the appropriate law." Finally, it declares that the seizure and carrying away of money, watches, jewelry, and other objects of value, is considered to be criminal theft and is punishable as such.¹²

It being recognized that certain acts committed by soldiers during war in violation of the rules of international law are assimilable to ordinary crimes and may be punished as such, several questions are presented as to the practical application of the principle. May, for example, the courts of one belligerent try and punish offenders belonging to the forces of the enemy, and if so, shall it be the ordinary criminal courts or the military tribunals?¹³ Practically all the authorities are agreed that soldiers belonging to the enemy army may be tried by the courts of the opposing belligerent for crimes committed in violation of the laws of war in the latter's territory against the persons or property of nationals of the injured belligerent,

¹² Morgan, *War Book of the German General Staff*, pp. 148, 162, and Carpentier, *Les Lois de la Guerre Continentale (Kriegsbrauch im Landkriege)*, pp. 104, 121, 131.

¹³ The Treaty of Peace provides that the military tribunals of the country of which the injured victim is a national shall have jurisdiction. The French writers are not entirely agreed. Some hold that the criminal courts may take jurisdiction; others that it belongs to the military courts.

if they fall in his hands.¹⁴ And this is the view laid down in the military manuals and military penal codes. But in the countries which follow the personal theory of jurisdiction their nationals are also punishable for crimes committed abroad. Thus, according to German law, a German soldier who committed a crime in the occupied regions of Belgium and France is liable to trial and punishment by the German courts. Could he also be tried and punished by a Belgian or French court? Renault, Pic, Garcon, Merignhac, Feraud-Giraud and other French jurists maintain that jurisdiction in such cases is concurrent, that is to say, the courts of either belligerent may take jurisdiction, and the fact that the offender may already have been tried and punished by a German court does not deprive a Belgian or French court from trying him. Otherwise, offenders would often be insufficiently punished or not punished at all. It is well known that the German authorities not only approved the commission of various acts done by German soldiers in violation of the laws of war, but even encouraged them, and the instances in which such offenders were tried and punished by the German courts were distressingly rare. The Treaty of Peace expressly declares that trial by a German court of Germans charged with violation of the laws of war shall be no bar to their prosecution before the courts of the Allied Powers (Art. 228).

The right of the belligerent in whose territory, even if it be at the moment under the military occupation of the enemy, crimes are committed by enemy soldiers, to try and punish the offenders, must be admitted in the interest of justice. The fact that the territory in which the offence is committed is at the time under hostile occupation would not seem to constitute a legal impediment to the assumption of jurisdiction by the courts of the country occupied, since under the modern conception of occupation there is no extinction of sovereignty, but only its temporary displacement.¹⁵ In practice, France has

¹⁴ Beling, a German writer, in the *Deutsche Juristen-Zeitung* of February 1, 1915, however, denies that one belligerent may lawfully punish offenders belonging to the army of the adversary. Cited in 43 *Clunet*, p. 72.

¹⁵ Nevertheless, it may be remarked that the German International Society of Comparative Law and Political Economy maintains the exclusive jurisdiction of the military occupant. A soldier in enemy territory, it insists, is under the

proceeded on the assumption that its courts may take jurisdiction of crimes committed by German soldiers within French territory under German military occupation. Some cases occurred after the close of the war of 1870-71,¹⁶ and there were many instances during the late war.¹⁷ The Treaty of Peace, as stated above, required Germany to deliver up to the Allies such offenders as they might designate. When the list of the accused was communicated to Baron von Lersner and made public in Germany it aroused such opposition that the Baron declined to deliver it to his government and announced his intention of resigning. In the face of an opposition which threatened to render impossible the execution of this provision of the treaty, the Supreme Council agreed¹⁸ to allow the accused to be tried by German courts. In consequence, the whole project for the trial of the Germans in the courts of the Allied and Associated Powers fell to the ground.

If there is no doubt that a belligerent has jurisdiction over crimes committed by enemy troops in his own territory, even though it be under hostile occupation, what shall we say as to his right to try and punish persons belonging to the enemy's forces who commit criminal acts against the soldiers of the former in a foreign country? exclusive jurisdiction of the laws of his own country, and he cannot be punished by the courts of the opposing belligerent. *Berliner Tageblatt*, Feb. 10, 1915, quoted by Merignhac, article cited, p. 37.

¹⁶ Renault, article cited, p. 18; Merignhac, article cited, p. 35.

¹⁷ On Feb. 26, 1915, a German soldier was sentenced to death by a French military court at Rennes for pillage, incendiarism and assassination of a wounded soldier on the field of battle in Belgium. Other cases are mentioned by Merignhac, article cited, p. 35. In May, 1919, a former German captain committed suicide while being held for trial by a French court on the charge of looting in France during the war. In November, 1919, five officers of the German army were arrested by the French military authorities in Germany and returned to France for trial on the charge of pillage and robbery in French territory during the German occupation thereof. A press dispatch from Lille, dated Nov. 20, 1919, stated that Allied officers were searching for 150 other Germans who were charged with similar offences.

¹⁸ The list of the accused contained the names of 896 persons, of whom 97 were demanded by England, 334 by Belgium and France each, 29 by Italy, 57 by Poland, and 41 by Roumania. Among the accused were Generals Hindenberg, Ludendorff and von Mackensen, Prince Rupprecht of Bavaria, the Duke of Württemberg, ex-Chancellor Bethmann Hollweg, and a number of admirals, including von Tirpitz.

Take, for example, the case of maltreatment by the Germans of a French soldier in a German prison, or the receiving by persons in Germany of stolen property taken from France. There were many cases of this kind during the late war. Would a French court be competent to try the offenders in case they should subsequently fall into the hands of the French authorities? Renault distinguishes between offences of this kind committed within the zone of operations of the French army, and those committed without such zone. The former fall within the jurisdiction of the French criminal courts, although they are committed in foreign territory; the latter do not.¹⁹

Under the French Code of Criminal Instruction (Art. 7), offences committed outside French territory are punishable in France only when they constitute attacks against the safety of the state.²⁰ Belgian law is the same (Code of Criminal Instruction, Art. 10). M. Clunet thinks crimes committed by the enemy against French prisoners in foreign territory violate the public order of France and amount to an attack upon its authority; they might therefore be treated as crimes against the safety of the state, and the offenders tried and punished by the French courts, if they should fall into the hands of the French authorities.²¹ Obviously, however, this would be an unwarranted interpretation of the term "safety of the State," elastic as it is, and M. Clunet himself admits that it is a "bit subtle."²² Merignhac expresses the opinion that an interpretation which forbids the French courts from taking jurisdiction of crimes committed in foreign territory against French nationals (except those which constitute attacks upon the safety of the state) is reasonable enough in time of peace, but that in time of war, especially war conducted in the manner in which it was carried on by the Germans, a belligerent whose nationals (especially prisoners and hostages) are maltreated by the enemy, should have the same right to

¹⁹ 26 *Rev. Gén. de Dr. Int. Pub.* (1918), p. 28.

²⁰ See the recent case of *Wechsler*, in which a French court took jurisdiction of an offence committed against the safety of the state by a Roumanian subject in Roumania. 44 *Clunet* (1917), p. 1745.

²¹ 40 *Revue Pénitentiaire* (1916), p. 37.

²² M. Garraud thinks, and it would seem, properly, that M. Clunet's reasoning cannot be defended. *Ibid.*, p. 38.

punish such offences when committed in foreign territory that he has to punish offences against the safety of the state. Article 7 of the French Code of Criminal Instruction should, therefore, be interpreted during war to apply to all crimes committed against French nationals in foreign territory.²³

This question was recently raised in France under the form of the right of the French courts to take jurisdiction of certain Germans who were charged with having received in Germany stolen property carried away from France. As is well known, the Germans, during their occupation of Belgium and the north of France, despoiled many factories and other industrial establishments of their machinery and equipment, and sold it to German manufacturers, who in turn utilized it in their own establishments for the manufacture of war materials and articles for civilian use. After the occupation by the Allied troops of the Rhine province of Germany, following the armistice, they found large quantities of this machinery, and arrested, with a view to their trial in France, a number of German manufacturers in whose plants the machinery was found. The German Government protested against the arrests on the ground that the seizure and transportation of the property in question to Germany was a lawful act of war entirely in accord with Article 23 (g) of the Hague Convention Respecting the Laws and Customs of War on Land, which allows a belligerent to appropriate enemy private property whenever it is "imperatively demanded by the necessities of war." Largely on account of the Anglo-French blockade, the very existence of Germany, it was asserted, was threatened, and it was therefore a "necessity" that she should draw in part upon the supply of raw materials and machinery which was available in enemy territory under German occupation. This plea of necessity, however, can hardly be defended.

It is quite clear from the language and context of Art. 23 (g), to say nothing of the debates in the Conference, that it was never intended to authorize a military occupant to despoil, on an extensive scale, the industrial establishments of occupied territory and to transport their machinery to his own country for sale to local manu-

²³ 24 *Rev. Gén. de Droit Int. Pub.* (1917), pp. 42-45.

facturers for use in the upkeep of his home industries. What was intended, and this alone, was to authorize the seizure or destruction of private property only in exceptional cases, when it was an imperative necessity for the conduct of his military operations in the locality where it was situated, or for the execution of measures of occupation.²⁴ This interpretation is further strengthened by Art. 46 of the convention, which requires belligerents to respect enemy private property and forbids confiscation, and by Art. 47 which formally prohibits pillage. The *Kriegsbrauch im Landkriege* itself declares that the carrying away of enemy private property from occupied territory must be "regarded as criminal robbery and be punished accordingly."²⁵

It would seem, therefore, that the acts complained of were not lawful acts of war, but that they constituted the crime of theft, which is punishable by the criminal law of all countries, and the crime having been committed within French territory, though under hostile occupation, all persons participating, directly or indirectly, in the seizure and transportation to Germany of the said property, were liable to trial and punishment by the French criminal courts.

But, among those arrested, were a number of German manufacturers who had purchased the French machinery of others, but who had not themselves participated, directly or indirectly, in its removal from France. Could they also be tried by the French courts on the charge of having received stolen property? The answer is no, since the act of receiving the property in question took place not in France, but in Germany, and under Art. 7 of the French Code of Criminal Instruction the French courts are not competent to take jurisdiction of offences committed outside French territory, except where they constitute attacks upon the safety of the state.²⁶

Another question which arises in connection with the application of the criminal law to individual acts committed in violation of the laws of war, is whether the criminal courts of a belligerent may take jurisdiction of offenders charged with the unlawful destruction

²⁴ Compare the article by Professor Nast, of the University of Nancy, *op. cit.*

²⁵ Morgan, War book of the German General Staff, p. 170.

²⁶ This is the conclusion of M. Nast in the article cited, p. 123.

of their merchant vessels on the high seas and the drowning of their crews and passengers, or with attacks upon hospital ships, of which there were many cases during the late war. The names of many German submarine commanders guilty of such acts are known to the British and French authorities, and there is a general agreement that these acts were not lawful belligerent acts, but crimes under the common law of nations. The coroner's jury at Kinsale, which held an inquest upon the death of the victims of the *Lusitania*, came to the conclusion that the sinking of the *Lusitania* was such a crime. The act having been committed without the territorial jurisdiction of Great Britain, would a British court be competent to try the commander of the submarine which torpedoed the vessel, in case he should fall into the hands of the British authorities? It would seem that on the legal fiction that a merchant vessel is assimilable to floating territory of the country whose flag it flies, an unlawful attack upon it, on the high seas or elsewhere, and which resulted in the death of the citizens of the state whose nationality it bears, would fall within the jurisdiction of such state.²⁷

Still another question has arisen in connection with the attempt to apply the criminal law in the case of individual violators of the laws of war, namely, whether an offender may be tried and condemned in his absence (*condemnation par contumace*, as French law terms it). As stated above, the names of many of the most flagrant offenders

²⁷ Compare the opinions of Coleridge, C. J., and Denman, J., in the case of *Regina v. Keyn*, 2 H. of L. Cases, 1; also, the report of Larnaude and Lapradelle in 46 Clunet, p. 139. In May, 1919, the captain of the German submarine which sank the British hospital ship *Glenart Castle* was arrested by the British authorities, placed in the Tower of London, and held for trial. The legal department of the government is said to have ruled that the authorities had no right to detain him during the life of the armistice, Art. 6 of which provided that in all territories evacuated by an enemy no persons should be prosecuted for offences of participation in war measures prior to the signing of the armistice, but the Admiralty took the position that they had the right to arrest such offenders at any time and hold them for trial after peace was declared. The prisoner was released, however, on the ground that he was not liable to arrest until peace had been officially declared; but there was considerable criticism of the action of the government, especially by Admiralty officials, who had done much to trace the perpetrators of German submarine atrocities. *N. Y. Times*, May 10 and Nov. 30, 1919.

on the German side, especially among the higher commanders (*e.g.*, Generals Stenger, Manteuffel, Von Bülow, Klauss, and Mackensen, Prince Eitel Friedrich, Crown Prince Rupprecht of Bavaria, the Duke of Brunswick and the Duke of Gronau, are well known to the British, Belgian and French authorities. The proclamation which they issued (*e.g.*, General Stenger's order directing his soldiers to take no prisoners), or the towns which were destroyed by their orders, constitute unimpeachable evidence of their guilt, and their acts were so obviously contrary to the laws and customs of war that no legitimate defence could be pleaded if they were to appear in person at the trial. Some French jurists during the late war advocated this procedure, and in several instances German offenders were indicted, though it does not appear that any of them were actually tried and condemned *par contumace*. In favor of this procedure, it was argued that the evidence of guilt in many instances was so abundant in quantity and conclusive in character that there would be no injustice in pronouncing condemnation against the guilty parties in their absence; that the putting *en lumière* by means of a trial and condemnation, of the facts concerning atrocities committed would have a certain moral effect in that the condemned would henceforth stand before the world as convicted criminals; and that in the event of their conviction, if they should subsequently come within the jurisdiction of the country they could be arrested and compelled to undergo the punishment imposed by the court.²⁸ It is hardly likely that an American or English court could be induced to take jurisdiction of a case in which the accused was not present, even if it had the constitutional power, and in any case it may be seriously doubted whether anything would be gained, since, if the accused were convicted, he would avoid the consequences by remaining outside the jurisdiction of the court.

The most perplexing question, perhaps, of all those likely to arise in connection with the attempt to punish individual violators of the

²⁸ Compare, *e.g.*, Pic, 23 *Rev. Gén. de Droit Int. Pub.* (1916), p. 261; Renault, 25 *ibid.*, p. 24; Merignhac, 24 *ibid.*, p. 47, and remarks of Commandant Jullien before the General Prison Society (40 *Rev. Pénitentiaire*, p. 110), who says the French law of contumacy never contemplated the trial *in absentia* of enemy soldiers charged with committing acts in violation of the laws of war.

laws of war is whether the plea of command by a superior officer shall be admitted as a defense against the prosecution of a soldier charged with a crime committed by him while under arms. During the late war German soldiers again and again asserted in the presence of their victims that they had been ordered by their commanders to commit the acts against which the inhabitants protested, and which they themselves committed with reluctance. Some of the men who took part in the deportation of the civilian population of Belgium and France are said to have broken down under the strain of the scenes which they were compelled to witness and were arrested and punished by the higher military authorities for refusing to execute the orders which they had received. After the devastation of the Somme region in France certain diaries of German soldiers were found in which the writers recorded that they carried out the work of destruction with reluctance, knowing that it was not lawful warfare, and that they did it only because they had been ordered to do so.²⁹

In July, 1915, a French council of war sitting at Rennes sentenced to death a Saxon soldier for pillage, incendiarism and assassination of wounded enemy soldiers on the field of battle. When arraigned before the council, he pleaded the formal orders of his commander and he named the general from whom the order emanated and also the lieutenant who compelled him to execute it. The court, having every reason to believe that the facts alleged by him were true, made a report of the same to the Minister of War in order that he might recommend clemency in case he desired to do so.³⁰ Another German soldier having been tried before a council of war at Toulouse and condemned to twenty years of forced labor on the charge of having, in September, 1914, burned a house in the Oise and wounded one of the inmates, who died the following evening, alleged that he acted under the orders of his captain.³¹ M. Renault related before the General Prison Society the case of a German officer who, being

²⁹ *Les Nouvelles* (a Dutch Journal) of April 13, 1917, published a diary of this kind. See, also, Wythe Williams in the *N. Y. Times* of March 28, 1917.

³⁰ 24 *Rev. Gén.*, p. 53.

³¹ *Ibid.*, p. 36.

reproached for having committed certain acts in a Belgian village, replied: "Yes, I know it was contrary to the law of nations for I am a doctor of law; I did not wish to do it, but I did it in obedience to the formal order of the Governor-General of Brussels." ²²

Who should be punished in such cases? The soldier who commits the crime, or the officer who gives the order and directs its execution, or the commander from whom it emanates in the first instance, or all of them, and any others to whom any share of the responsibility, immediate or ultimate, may be attributed? It is argued by some that it would be manifestly unjust to punish the soldier who is compelled by his superior officer to commit the act and who does it only because he would himself be severely punished for disobedience of orders in case he refused. Obedience to orders is the first duty of a soldier, and it is absolutely necessary to military discipline. He cannot discuss or question the commands that are given him; he is not the judge of their legality or illegality; and if he were, his ignorance of the laws of war would in many cases make him an incompetent judge. A French officer speaking before the *Société d'Economie Sociale* of Paris in February, 1915, related that an intelligent young German soldier, when placed on trial before a council of war at Paris on the charge of pillage, alleged that the general in command had given the order to shoot civilians and to pillage the town, and the prisoner added gravely: "With us it is not good when the chief gives an order to refuse to execute it." ²³ Had he refused, he probably would have been shot by his own commander.

In such cases, therefore, justice requires the punishment of the officer who is responsible for the order rather than the simple soldier who acts by constraint and who has no power of judgment or discretion. But there are practical procedural difficulties in the application of this principle, since it is not easy to determine the motives which animate a soldier in committing such an act. The mere allegation that he committed it because he was ordered to do so is not evidence. In fact he may have felt no scruples that it was wrong or contrary to the laws of war. The probabilities are that

²² 39 *Revue Pénitentiaire* (1915), p. 427.

²³ *Reforme Sociale*, 1915, p. 202.

every soldier who commits such an act would when put on trial plead the superior command of his officer as a defence, although he may have done it voluntarily and without any feeling of repugnance. Moreover, it would be impossible in many cases to establish the fact of a superior command. Where commands are issued in the form of written orders or proclamation there would not necessarily be any difficulty, but many military orders are verbal. Should the allegation of the accused that he acted under verbal orders be accepted when no proof is adduced? If the rule of the criminal law which puts the burden of proof on the state were followed in such cases, there would probably be few convictions, for the accused would usually allege that he acted under verbal orders and the prosecution would find it difficult to show the contrary.

It is an axiom, at least of English and American law, that the plea of superior order is no defense to an illegal act.³⁴ But is the rule applicable in the case of acts committed by soldiers during war, when those acts have been ordered by their commanders?

The British Manual of Military Law enumerates a list of acts which it denominates as war crimes and for the commission of which the authors shall be punished, but it adds that "*members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government or commander cannot be punished by the enemy*" (Art. 443).³⁵ But the officers or com-

³⁴ See the early English case of *Mostyn v. Fabrigas*, 1 Cowper 180, decided by Lord Mansfield; and the American cases of *Little v. Barreme*, 2 Cranch 170, 179, and *Mitchell v. Harmony*, 13 How. 115. In the first mentioned American case, Chief Justice Marshall said it was the duty of a soldier to execute the *lawful* orders of his superiors, but that he was personally liable for the execution of an illegal order. In the case of *Mitchell v. Harmony* the Supreme Court repudiated the doctrine that an officer may take shelter under the plea of superior command. Referring to an order given to a military officer by his commander to commit an illegal act, the court declared that the order was no justification to the person by whom it was executed. It added: "Upon principle, independent of the weight of judicial decision, it can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior."

³⁵ This qualification is criticized by Bellot (*Grotius Society Pubs.* II, p. 46) as one which "makes waste paper for the whole chapter," and he points out that it was not in any previous edition of the Manual. It is also criticized by a

manders responsible for such orders may, if they fall into the hands of the enemy, be punished. This provision also appears in the American Rules of Land Warfare.³⁶

English authority generally is hardly in accord with this view. A belligerent, says Hall, "possesses the right to punish persons who have violated the laws of war, if they afterwards fall into his hands,"³⁷ and he makes no reservation in the case of those who have committed the violation by order of their commanders. Holland adopts the same view.³⁸ Phillipson asserts that "the contention that a combatant's acts, no matter how heinous, outrageous or abominable, do not possess a criminal character if they are committed under orders from superior officers—carried to its logical conclusion would lead to ineptitude and absurdity; the successive shifting of responsibility would exculpate every one until he reached the ultimate cause."³⁹ Sir Frederick Smith, Attorney-General of England, now Lord Chancellor, was also of the opinion that the guilty offenders should not be permitted to plead the orders of their superiors and thus shift the responsibility ultimately to the head of the state. But Oppenheim approves the rule of the American and British manuals.⁴⁰

Article 64 of the French Criminal Code lays down the rule that an act committed by a person who has been constrained by force is neither a crime nor a misdemeanor (*délit*). Professor Nast, of the University of Nancy, has expressed the opinion that this immunity would cover the case of a soldier who is compelled to commit an act in violation of the laws of war and that, therefore, German soldiers

writer in the *Jour. of the Society of Comparative Legislation and Int. Law* (Vol. 18, p. 154) as contrary to the rule of Anglo-American jurisprudence that an individual is responsible for his acts whether committed under order or not.

³⁶ Art. 366. "Individuals of the armed forces will not be punished for these offences in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

³⁷ *International Law*, 6th ed., p. 410.

³⁸ *Laws of War on Land*, Secs. 117-118.

³⁹ *International Law and the Great War*, p. 260. Compare, also, Bartlett, an English writer, in 35 *Law Quar. Review*, p. 191.

⁴⁰ *International Law*, Vol. II, Sec. 253.

who were compelled by their commanders to participate in the spoliation of French industrial establishments and the removal of their machinery to Germany, although the acts were contrary to The Hague Convention, were not liable to arrest and trial by the French courts.⁴¹ Professor Merignhac, of Toulouse, however, adopts a contrary view and maintains that Article 64 of the Penal Code was never intended to shield soldiers who in time of war commit atrocities and who afterwards seek refuge under the plea that they were ordered by their commanders to commit them.

He says Article 64 of the French Penal Code is a law for civilized people; it assumes a constraint exercised in isolated cases, and in fact its application is rare in the courts of criminal repression; it cannot, therefore, apply to the totality of punishable acts committed in war entire, because the public action would find itself paralyzed in case its exceptional character were transformed into a general rule. It would mean that all prosecutions against German prisoners would immediately cease, and at the conclusion of war, no action could be taken against those who had not been captured because they could invoke the excuse of constraint; and as we have indicated, all subordinates and all chiefs, great and small, would escape punishment.⁴²

This is the view adopted by the great majority of French jurists who have discussed the question. They maintain that every person who has any share in the commission of a criminal act during war, the private soldier who commits it, the officer who delivers the order to him, the commander from whom it emanates, and even the chief of state who is ultimately responsible, may be tried and punished if found guilty. And the French military courts acted on this principle in all the cases that came before them during the late war. In every case where the plea of superior command was invoked, the courts made short shrift of it, and if the evidence established the guilt of the accused, he was condemned even when he produced conclusive proof that he acted under orders.⁴³

Whether the individual soldier should be held responsible and punished in such cases, there will always, perhaps, be a difference

⁴¹ 26 *Rev. Gén. de Droit Int. Pub.* (1919), p. 123.

⁴² 24 *Rev. Gén. de Droit Int. Pub.* (1917), p. 53.

⁴³ Some cases are cited by Merignhac in 24 *Rev. Gén.* (1917), p. 53.

of opinion; but concerning the general proposition that commanders upon whom the responsibility for criminal acts and acts in violation of the generally recognized laws of war, should be held accountable and punished by the adversary in case they fall into his hands, there ought to be no dissent. If it were generally understood in the future that commanders would be so held responsible, it is probable that such orders as that issued by General Stenger, directing his men to take no prisoners, would be rarer.

The principle that military officers should be held personally responsible for orders in violation of the laws and customs of war, if pushed to its logical limits, would render commanders-in-chief, that is, heads of states, liable for illegal acts for which they are responsible, directly or indirectly. Very early during the late war jurists in both France and England advocated the holding of the German Emperor, in case Germany were defeated, responsible for acts committed by his military and naval forces in violation of the criminal law and the laws of war. Commandant Jullien, speaking before the French Society of Social Economy in 1915, asserted that

it was necessary to go beyond the individual, the actual author of the act complained of; it was necessary to search for the chiefs; from chief to chief we must go to the top. In the German army there is one supreme chief, the Emperor. Let us know, for example, whether the act of General Stenger, who was accused of having issued a proclamation ordering his troops to give no quarter, was ever disavowed.⁴⁴

Professor Merignhac approved the suggestion. "It is evident," he said, "that the Kaiser knew it, and perhaps one may even say, ordered it. Of course, he did not give directly all the barbarous orders issued by his generals, but the latter knew that their acts had his approval."⁴⁵ Professor Weiss, an eminent member of the law faculty of the University of Paris, took the same view in an address before the General Prison Society of France in 1915. "I think," he said, "that not only the direct immediate offenders should be held

⁴⁴ *Réforme Sociale*, 1915, p. 203.

⁴⁵ 24 *Rev. Gén. de Droit Int. Pub.*, p. 51.

responsible, but that we must go to the top; we must pass over the heads of the primary offenders, to the chiefs, to those of whom the soldiers and officers have been only the servants and valets."⁴⁶ Professors Larnaude and Lapradelle, in an elaborate report to the French Government on the question of the penal responsibility of the ex-Emperor, advocated that he be held personally responsible for the crimes committed by his armed and naval forces in violation of the laws and customs of war and that he be placed on trial before an international tribunal.⁴⁷ Jurists and statesmen in England also demanded the trial of the ex-Emperor, who, it was asserted, was not only responsible for starting the war, but also for many of the worst atrocities committed by his officers, soldiers and sailors.

The question of the responsibility of the authors of the war, the facts as to the breaches of the laws and customs of war by the forces of the German Empire and their allies and the degree of responsibility for offences committed by persons belonging to the enemy forces, was made the subject of an elaborate report by a commission of the Peace Conference.⁴⁸ The commission reported that the war was "premeditated by the Central Powers, together with their allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable;" and that the war was carried on by these Powers by "barbarous methods in violation of the established laws and customs of war and the elementary laws of humanity." Regarding the personal responsibility of individual offenders against the law of nations, the commission declared:

⁴⁶ 39 *Revue Pénitentiaire* (1915), p. 457. The commission of the French Chamber of Deputies which was charged with reporting on the bill for the ratification of the Treaty of Peace with Germany declared in its report that "among the responsibilities incurred, none is higher and more grave than that of the German Emperor. He should be judicially prosecuted for having violated the laws and customs of war. Supreme chief of the armed forces on land and sea, the 'lord of war' not only knew, but tolerated and encouraged, the crimes which his troops committed on land and sea. History will demand that he be held responsible for these acts." Text of the report in Barthou, *Le Traité de Paix*, p. 49.

⁴⁷ Their report is published in 46 *Clunet* (1919), pp. 131ff.

⁴⁸ Printed in English by the Carnegie Endowment for International Peace, Div. of Int. Law, Pamphlet No. 32, and reprinted herein, *infra*, p. 95.

In these circumstances, the commission desires to state expressly that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the heads of states.

There was little doubt, the commission added, that the ex-Kaiser and others in high authority were cognizant of and could at least have mitigated the barbarities committed during the course of the war. "A word from them would have brought about a different method in the action of their subordinates on land, at sea and in the air." The conclusion of the commission was that "all persons belonging to enemy countries, however high their positions may have been, without distinction of rank, including chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity are liable to prosecution."⁴⁹

As to acts which provoked the war, although the responsibility could be definitely placed, the commission advised that the authors be not made the object of criminal proceedings, but recommended that the Peace Conference "adopt special measures" and "create a special organ in order to deal as they deserve with the authors of

⁴⁹ The two American members of the commission, Messrs. Lansing and Scott, dissented from certain conclusions and recommendations of the Commission. They did not consider that a judicial tribunal was a proper forum for the trial of offences of a moral nature, and they objected to the proposal of the majority to place on trial before a court of justice persons charged with having violated the "principles of humanity" or the "laws of humanity." They also objected to the "unprecedented proposal" to put on trial before an international criminal court the heads of states not only for having directly ordered illegal acts of war, but for having abstained from preventing such acts. This would be contrary to the doctrine of immunity of sovereigns from trial and punishment by a foreign jurisdiction as laid down by Chief Justice Marshall in the case of the *Schooner Exchange v. McFadden* (7 Cranch 116).

The reasoning of the American members was in accord with the somewhat technical conceptions of American criminal law and procedure, but there are doubtless American jurists who will not concur in their line of reasoning or in their conclusions.

The two Japanese members of the commission also dissented from certain of the conclusions of the majority, and expressed doubt whether, under the law of nations, offenders against the laws of war, belonging to the forces of the adversary, could be tried before a court constituted by the opposing belligerents.

such acts." The Peace Conference adopted in principle the recommendations of the commission in respect to the trial of the ex-Emperor. Article 227 of the treaty with Germany is as follows:

The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties. A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defence. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy and Japan. In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed. The Allied and Associated Powers will address a request to the government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.⁵⁰

Under the treaty, the accused was to have been tried, not for an offence against the criminal law, nor for violation of the laws and customs of war by his subordinates for which he might have been held responsible, but only for offences against morality and for breaches of treaty faith. Had he been surrendered and placed on trial, it is not clear what punishment could have been imposed. Since he was not charged with a crime, he would hardly have been liable to the penalties prescribed for violations of the criminal law, and since the law of nations prescribes no penalties for offences against international morality or the sanctity of treaties, it would seem that the judgment of the court must have been limited to a formal pronouncement,

"Since the above was written the Dutch Government has informed the Allied and Associated Governments that it would not surrender the ex-Kaiser. "This Government," it stated in its reply, "cannot admit any other duty than that imposed upon it by the laws of the Kingdom and national tradition." According to these laws and traditions, it added, "Holland has always been regarded as a refuge for the vanquished in international conflicts" and the Government could not refuse "to the former Emperor the benefit of its laws and this tradition" and thus "betray the faith of those who have confided themselves to their free institutions."—*N. Y. Times Current History*, Vol. XI, Pt. II, March, 1920, p. 377.

stigmatizing him perhaps as a treaty breaker primarily responsible for the war and holding him up to the execration of mankind. But the Peace Conference, as well as the public opinion of the greater part of the world, has already pronounced him guilty of these acts, and it is not quite clear what would have been gained by having a court try him on moral charges, for which he had already been convicted, and to pronounce a condemnation which he had already received. It may be questioned therefore whether the decision of the Peace Conference was the best solution of the problem.

If the Conference believed that he deserved to be punished, would it not have been more logical and more in accord with the principles of the criminal law and procedure to have extended the theory of responsibility for criminal acts one degree higher than it actually did, declared that the ex-Emperor was as much responsible for a criminal act which he sanctioned or permitted as a general who gave the order to commit it, and, having laid down this principle, provided for the creation of a court to try him on criminal charges instead of moral offences?

But, as was pointed out by the American members of the Commission on Responsibilities, it is a well-established rule of the law of nations that heads of States are exempt from the jurisdiction of foreign courts⁵¹ and in the United States this immunity has even been interpreted to apply to ex-sovereigns.⁵² The latter interpretation of the immunity, however, can hardly be said to be a rule of international law, and it may be argued with reason that the exemption accorded to reigning sovereigns was never intended to shield and protect from punishment heads of states responsible for such crimes and offences against the rights of nations as those with which the German Emperor was charged. The immunity referred to was founded on considerations of international comity and public policy and was introduced for the purpose of preventing the courts of one

⁵¹ See the cases of *Mighell v. Sultan of Johore*, 1 Q. B. 149 (1894); *de Haber v. Queen of Portugal*, 17 Q. B. 196 (1851); *Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812), and *Moore, Digest of International Law*, Vol. II, sec. 250.

⁵² *Hatch v. Baez*, 7 Hun 596, and *Underhill v. Hernandez*, 26 U. S. App. 572 (1895). This matter is learnedly discussed by Quincy Wright in 19 *Amer. Political Science Review* (1919), p. 120.

state from interfering with the discharge by the heads of other states of their high and important duties. It may be confidently asserted that it was not intended to lay down the principle that an abdicated or deposed chief of state cannot be arraigned before an international tribunal for high crimes committed by him against other nations while he was in power. The fact is, cases like that of the former German Emperor are not governed by the established rules of international law; whether he should be tried by an international tribunal and punished, if convicted, is rather a matter of expediency and of international policy than of municipal or international law.

The Peace Conference set a new precedent, one that is to be highly commended, in affirming the principle that individual offenders against the laws of war, whenever their acts are criminal in character, are personally responsible and liable to punishment, and in endeavoring to give practical effect to this principle by requiring German offenders during the recent war to be delivered up for trial and punishment. In relieving the chief offender, the ex-Kaiser, from responsibility for criminal acts which he permitted, if he did not directly approve and encourage, the Conference failed, in the opinion of many persons, to go to the limit which logic, consistency and considerations of equal justice required. Had it affirmed the elementary principle that no man, however high his station, is above the law, and that heads of states who are commanders-in-chief who permit, approve and even encourage the commission of crimes by their subordinates in the field, are equally guilty and that they cannot escape responsibility by taking refuge under the plea of an immunity which was really never intended to shield them from the consequences of their crimes, the moral effect in the wars of the future would have been most salutary. It would have been tantamount to the serving of notice on chiefs of states that he who provokes an unjust war, who wages it according to cruel and barbarous methods, who permits and sanctions atrocities by his troops, who approves and even encourages shocking violations of the most elementary and long-established laws and usages of war, and who rewards by decorations and promotions their authors, does so with full

knowledge that if he is defeated he will be brought to the bar of justice and punished equally with the humblest soldier who has been compelled to violate the law, and who, for this and other reasons, may be a thousand times less responsible.

COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR AND ON ENFORCEMENT OF PENALTIES *

REPORT PRESENTED TO THE PRELIMINARY PEACE CONFERENCE

March 29, 1919

The Preliminary Peace Conference at the plenary session on the 25th January, 1919 (Minute No. 2), decided to create, for the purpose of inquiring into the responsibilities relating to the war, a commission composed of fifteen members, two to be named by each of the Great Powers (United States of America, British Empire, France, Italy and Japan) and five elected from among the Powers with special interests.

The Commission was charged to inquire into and report upon the following points:

1. The responsibility of the authors of the war.
2. The facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air during the present war.
3. The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

* Official English text, reprinted from Pamphlet No. 32, Division of International Law, Carnegie Endowment for International Peace, Washington, D. C., in which the report and all appendices are published in full, with an introductory note by James Brown Scott, Technical Delegate of the United States to the Peace Conference and one of the American members of the Commission.

At a meeting of the Powers with special interests held on the 27th January, 1919, Belgium, Greece, Poland, Roumania and Serbia were chosen as the Powers who should name representatives. (Minute No. 2. Annex VI.)

After the several states had nominated their respective representatives, the Commission was constituted as follows:

United States of America:

Hon. Robert Lansing.

Major James Brown Scott.

British Empire:

The Rt. Hon. Sir Gordon Hewart, K.C., M.P.

or

Sir Ernest Pollock, K.B.E., K.C., M.P.

The Rt. Hon. W. F. Massey.

France:

Mr. André Tardieu.

(Alternate: Captain R. Masson.)

Mr. F. Larnaude.

Italy:

Mr. Scialoja.

(Alternates: Mr. Ricci Busatti, Mr. G. Tosti.)

Mr. Raimondo. Later, Mr. Brambilla (3rd February);

Mr. M. d'Amelio (16th February).

Japan:

Mr. Adatci.

Mr. Nagaoka. Later, Mr. S. Tachi (15th February).

Belgium:

Mr. Rolin-Jaequemyns.

Greece:

Mr. N. Politis.

Poland:

Mr. C. Skirmunt. Later, Mr. N. Lubieniski (14th February).

Roumania:

Mr. S. Rosental.

Serbia:

Professor Slobodan Yovanovitch.

(Alternates: Mr. Koumanoudi, Mr. Novacovitch.)

Mr. Lansing was selected as Chairman of the Commission, and as Vice-Chairmen, Sir Gordon Hewart or Sir Ernest Pollock and Mr. Scialoja. Mr. A. de Lapradelle (France) was named General Secretary and the Secretaries of the Commission were:

Mr. A. Kirk, United States of America; Lieutenant-Colonel O. M. Biggar, British Empire; Mr. G. H. Tosti, Italy; Mr. Kuriyama, Japan; Lieutenant Baron J. Guillaume, Belgium; Mr. Spyridion Marchetti, Greece; Mr. Casimir Rybinski, Poland.

Mr. G. H. Carmerlynck, *Professeur agrégé* of the University of France, acted as interpreter to the Commission.

The Commission decided to appoint three Sub-Commissions.

Sub-Commission I, on Criminal Acts, was instructed to discover and collect the evidence necessary to establish the facts relating to culpable conduct which (a) brought about the World War and accompanied its inception, and (b) took place in the course of hostilities.

This Sub-Commission selected Mr. W. F. Massey as its Chairman.

Sub-Commission II, on the Responsibility for the War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts in relation to the conduct which brought about the World War and accompanied its inception, prosecutions could be instituted, and, if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the court before which prosecutions should proceed.

This Sub-Commission selected alternatively Sir Gordon Hewart or Sir Ernest Pollock as Chairman.

Sub-Commission III, on the Responsibility for the Violation of the Laws and Customs of War, was instructed to consider whether, on the facts established by the Sub-Commission on Criminal Acts

in relation to conduct which took place in the course of hostilities, prosecutions could be instituted, and if it decided that prosecutions could be undertaken, to prepare a report indicating the individual or individuals who were, in its opinion, guilty, and the court before which prosecutions should proceed.

This Sub-Commission selected Mr. Lansing as its Chairman.

When the reports of the Sub-Commissions had been considered, a committee, composed of Mr. Rolin-Jaequemyns, Sir Ernest Pollock and Mr. M. d'Amelio was appointed to draft the report of the Commission. This committee was assisted by Mr. A. de Lapradelle and Lieutenant-Colonel O. M. Biggar.

The Commission has the honor to submit its report to the Preliminary Peace Conference. The report was adopted unanimously subject to certain reservations by the United States of America and certain other reservations by Japan. The United States Delegation has set forth its reservations and the reasons therefor in a memorandum attached hereto (Annex II) and the same course has been taken by the Japanese Delegation (Annex III).

CHAPTER I

RESPONSIBILITY OF THE AUTHORS OF THE WAR

On the question of the responsibility of the authors of the war, the Commission, after having examined a number of official documents relating to the origin of the World War, and to the violations of neutrality and of frontiers which accompanied its inception, has determined that the responsibility for it lies wholly upon the Powers which declared war in pursuance of a policy of aggression, the concealment of which gives to the origin of this war the character of a dark conspiracy against the peace of Europe.

This responsibility rests first on Germany and Austria, secondly on Turkey and Bulgaria. The responsibility is made all the graver by reason of the violation by Germany and Austria of the neutrality of Belgium and Luxemburg, which they themselves had guaranteed. It is increased, with regard to both France and Serbia, by the violation of their frontiers before the declaration of war.

I.—PREMEDITATION OF THE WAR

A.—*Germany and Austria*

Many months before the crisis of 1914 the German Emperor had ceased to pose as the champion of peace. Naturally believing in the overwhelming superiority of his army, he openly showed his enmity towards France. General von Moltke said to the King of the Belgians: "This time the matter must be settled." In vain the King protested. The Emperor and his Chief of Staff remained no less fixed in their attitude.¹

On the 28th June, 1914, occurred the assassination at Sarajevo of the heir-apparent of Austria. "It is the act of a little group of madmen," said Francis Joseph.² The act, committed as it was by a subject of Austria-Hungary on Austro-Hungarian territory, could in no wise compromise Serbia, which very correctly expressed its condolences³ and stopped public rejoicings in Belgrade. If the Government of Vienna thought that there was any Serbian complicity, Serbia was ready⁴ to seek out the guilty parties. But this attitude failed to satisfy Austria and still less Germany, who, after their first astonishment had passed, saw in this royal and national misfortune a pretext to initiate war.

At Potsdam a "decisive consultation" took place on the 5th July, 1914.⁵ Vienna and Berlin decided upon this plan: "Vienna will send to Belgrade a very emphatic ultimatum with a very short limit of time."⁶

The Bavarian Minister, von Lerchenfeld, said in a confidential despatch dated the 18th July, 1914, the facts stated in which have never been officially denied: "It is clear that Serbia cannot accept the demands, which are inconsistent with the dignity of an independent state."⁷ Count Lerchenfeld reveals in this report that,

¹ Yellow Book, M. Cambon to M. Pichon, 22nd November, 1913.

² Message to his people.

³ Serbian Blue Book, page 30.

⁴ Yellow Book, No. 15, M. Cambon to M. Bienvenu Martin, 21st July, 1914.

⁵ Lichnowsky Memoir.

⁶ Dr. Muehlton's Memoir.

⁷ Report of the 18th July, 1914.

at the time it was made, the ultimatum to Serbia had been jointly decided upon by the Governments of Berlin and Vienna; that they were waiting to send it until President Poincaré and M. Viviani should have left for St. Petersburg; and that no illusions were cherished, either at Berlin or Vienna, as to the consequences which this threatening measure would involve. It was perfectly well known that war would be the result.

The Bavarian Minister explains, moreover, that the only fear of the Berlin Government was that Austria-Hungary might hesitate and draw back at the last minute, and that on the other hand Serbia, on the advice of France and Great Britain, might yield to the pressure put upon her. Now, "the Berlin Government considers that war is necessary." Therefore, it gave full powers to Count Berchtold, who instructed the Ballplatz on the 18th July, 1914, to negotiate with Bulgaria to induce her to enter into an alliance and to participate in the war.

In order to mask this understanding, it was arranged that the Emperor should go for a cruise in the North Sea, and that the Prussian Minister of War should go for a holiday, so that the Imperial Government might pretend that events had taken it completely by surprise.

Austria suddenly sent Serbia an ultimatum that she had carefully prepared in such a way as to make it impossible to accept. Nobody could be deceived; "the whole world understands that this ultimatum means war."⁸ According to M. Sazonof, "Austria-Hungary wanted to devour Serbia."⁹

M. Sazonof asked Vienna for an extension of the short time limit of forty-eight hours given by Austria to Serbia for the most serious decision in its history.¹⁰ Vienna refused the demand. On the 24th and 25th July England and France multiplied their efforts to persuade Serbia to satisfy the Austro-Hungarian demands. Russia threw in her weight on the side of conciliation.¹¹

Contrary to the expectation of Austria-Hungary and Germany,

⁸ Lichnowsky Memoir.

⁹ Austro-Hungarian Red Book, No. 16.

¹⁰ Blue Book, No. 26.

¹¹ Yellow Book, No. 36; Blue Book, Nos. 12, 46, 55, 65, 94, 118.

Serbia yielded. She agreed to all the requirements of the ultimatum, subject to the single reservation that, in the judicial inquiry which she would commence for the purpose of seeking out the guilty parties, the participation of Austrian officials would be kept within the limits assigned by international law. "If the Austro-Hungarian Government is not satisfied with this," Serbia declared she was ready "to submit to the decision of The Hague Tribunal."¹²

A quarter of an hour before the expiration of the time limit, at 5.45 on the 25th, M. Pachich, the Serbian Minister of Foreign Affairs, delivered this reply to Baron Geisl, the Austro-Hungarian Minister. On M. Pachich's return to his own office he found awaiting him a letter from Baron Geisl saying that he was not satisfied with the reply. At 6.30 the latter had left Belgrade, and even before he had arrived at Vienna, the Austro-Hungarian Government had handed his passports to M. Yovanovitch, the Serbian Minister, and had prepared thirty-three mobilization proclamations, which were published on the following morning in the *Budapesti Kozlöní*, the official gazette of the Hungarian Government. On the 27th Sir Maurice de Bunsen telegraphed to Sir Edward Grey: "This country has gone wild with joy at the prospect of war with Serbia."¹³ At midday on the 28th Austria declared war on Serbia. On the 29th the Austrian Army commenced the bombardment of Belgrade, and made its dispositions to cross the frontier.

The reiterated suggestions of the *Entente* Powers with a view to finding a peaceful solution of the dispute only produced evasive replies on the part of Berlin or promises of intervention with the Government of Vienna without any effectual steps being taken.

On the 24th of July Russia and England asked that the Powers should be granted a reasonable delay in which to work in concert for the maintenance of peace. Germany did not join in this request.¹⁴

On the 25th July Sir Edward Grey proposed mediation by four Powers (England, France, Italy and Germany). France¹⁵ and

¹² Yellow Book, No. 46.

¹³ Blue Book, No. 41.

¹⁴ Russian Orange Book, No. 4; Yellow Book, No. 43.

¹⁵ Yellow Book, No. 70.

Italy¹⁶ immediately gave their concurrence. Germany¹⁷ refused, alleging that it was not a question of mediation but of arbitration, as the conference of the four Powers was called to make proposals, not to decide.

On the 26th July Russia proposed to negotiate directly with Austria. Austria refused.¹⁸

On the 27th July England proposed a European conference. Germany refused.¹⁹

On the 29th July Sir Edward Grey asked the Wilhelmstrasse to be good enough to "suggest any method by which the influence of the four Powers could be used together to prevent a war between Austria and Russia."²⁰ She was asked herself to say what she desired.²¹ Her reply was evasive.²²

On the same day, the 29th July, the Czar Nicholas II despatched to the Emperor William II a telegram suggesting that the Austro-Serbian problem should be submitted to The Hague Tribunal. This suggestion received no reply. This important telegram does not appear in the German White Book. It was made public by the Petrograd *Official Gazette* (January, 1915).

The Bavarian Legation, in a report dated the 31st July, declared its conviction that the efforts of Sir Edward Grey to preserve peace would not hinder the march of events.²³

As early as the 21st July German mobilization had commenced by the recall of a certain number of classes of the reserve,²⁴ then of German officers in Switzerland,²⁵ and finally of the Metz garrison on the 25th July.²⁶ On the 26th July the German fleet was called back from Norway.²⁷

¹⁶ Yellow Book, No. 72; Blue Book, No. 49.

¹⁷ Blue Book, No. 43.

¹⁸ Yellow Book, No. 54.

¹⁹ *Ibid.*, Nos. 68 and 73.

²⁰ *Ibid.*, No. 97; Blue Book, No. 84.

²¹ Blue Book, No. 111.

²² Yellow Book, 97, 98 and 109.

²³ Second Report of Count Lerchenfeld, Bavarian Plenipotentiary at Berlin, published on the instructions of Kurt Eisner.

²⁴ Yellow Book, No. 15.

²⁵ *Ibid.*, No. 106.

²⁵ *Ibid.*, No. 60.

²⁷ *Ibid.*, No. 58.

The *Entente* did not relax its conciliatory efforts, but the German Government systematically brought all its attempts to nought. When Austria consented for the first time on the 31st July to discuss the contents of the Serbian note with the Russian Government and the Austro-Hungarian Ambassador received orders to "converse" with the Russian Minister of Foreign Affairs,²⁸ Germany made any negotiation impossible by sending her ultimatum to Russia. Prince Lichnowsky wrote that "a hint from Berlin would have been enough to decide Count Berchtold to content himself with a diplomatic success and to declare that he was satisfied with the Serbian reply, but this hint was not given. On the contrary they went forward towards war."²⁹

On the 1st August the German Emperor addressed a telegram to the King of England³⁰ containing the following sentence: "The troops on my frontier are, at this moment, being kept back by telegraphic and telephonic orders from crossing the French frontier."

Now, war was not declared till two days after that date, and as the German mobilization orders were issued on that same day, the 1st August, it follows that, as a matter of fact, the German army had been mobilized and concentrated in pursuance of previous orders.

The attitude of the *Entente* nevertheless remained still to the very end so conciliatory that, at the very time at which the German fleet was bombarding Libau, Nicholas II gave his word of honor to William II that Russia would not undertake any aggressive action during the *pourparlers*,³¹ and that when the German troops commenced their march across the French frontier M. Viviani telegraphed to all the French Ambassadors "we must not stop working for accommodation."

On the 3rd August von Schoen went to the Quai d'Orsay with the declaration of war against France. Lacking a real cause of complaint, Germany alleged, in her declaration of war, that bombs had been dropped by French aeroplanes in various districts in Ger-

²⁸ Blue Book, No. 133; Red Book, No. 55.

²⁹ Lichnowsky Memoir, p. 1.

³⁰ White Book, Anlage 32; Yellow Book, Annex II bis, No. 2.

³¹ Telegram from Nicholas II to William II; Yellow Book, No. 6, Annex V.

many. This statement was entirely false. Moreover, it was either later admitted to be so³² or no particulars were ever furnished by the German Government.

Moreover, in order to be manifestly above reproach, France was careful to withdraw her troops 10 kilom. from the German frontier. Notwithstanding this precaution, numerous officially established violations of French territory preceded the declaration of war.³³

The provocation was so flagrant that Italy, herself a member of the Triple Alliance, did not hesitate to declare that in view of the aggressive character of the war the *casus fœderis* ceased to apply.³⁴

B.—Turkey and Bulgaria

The conflict was, however, destined to become more widespread and Germany and Austria were joined by allies.

Since the Balkan War the Young Turk Government had been drawing nearer and nearer Germany, whilst Germany on her part had constantly been extending her activities at Constantinople.

A few months before war broke out, Turkey handed over the command of her military and naval forces to the German General Liman von Sanders and the German Admiral Souchon.

In August, 1914, the former, acting under orders from the General Headquarters at Berlin, caused the Turkish Army to begin mobilizing.³⁵

Finally, on the 4th August, the understanding between Turkey and Germany was definitely formulated in an alliance.³⁶ The con-

³² Statement of the Municipality of Nuremburg, dated the 3rd April, 1916.

³³ Patrols of various strengths crossed the French frontier at fifteen points, one on the 30th July at Xures, eight on the 2nd August, and the others on the 3rd August, before war was declared. The French troops lost one killed and several wounded. The enemy left on French territory four killed, one of whom was an officer, and seven prisoners. At Suarce, on the 2nd August, the enemy carried off nine inhabitants, twenty-five horses, and thirteen carriages. Four incursions by German dirigibles took place between the 25th July and the 1st August. Finally, German aeroplanes flew over Lunéville on the 3rd August, before the declaration of war, and dropped six bombs. (Yellow Book, Nos. 106, 136, 139, etc.)

³⁴ Yellow Book, No. 124.

³⁵ H. Morgenthau, *Secrets of the Bosphorus*, London, 1918, pp. 39, 40.

³⁶ German White Book, 1913, 1917, Nos. 19 and 20.

sequence was that when the *Goeben* and the *Breslau* took refuge in the Bosphorus, Turkey closed the Dardanelles against the *Entente* squadrons and war followed.

On the 14th October, 1915, Bulgaria declared war on Serbia, which country had been at war with Austria since the 28th July, 1914, and had been attacked on all fronts by a large Austro-German army since the 6th October, 1915. Serbia had, however, committed no act of provocation against Bulgaria.

Serbia never formulated any claim against Bulgaria during the negotiations which took place between the *Entente* Powers and Bulgaria prior to the latter's entry into the war. On the contrary, she was offering herself ready to make certain territorial concessions to Bulgaria in order to second the efforts of the *Entente* Powers to induce Bulgaria to join them. According to Count Lerchenfeld's reports, however, Bulgaria had begun negotiations with the Central Powers as early as the 18th July, 1914, with a view to entering the war on their side. In April, 1915, the Bulgars made an armed attack against Serbia near Valandovo and Struvmitza, where a real battle was fought on Serbian territory. Being defeated, the Bulgars retired, ascribing this act of aggression to some comitadjis. An international commission (composed of representatives of the *Entente*) discovered, however, that there had been Bulgarian regular officers and soldiers among the dead and the prisoners.²⁷

On the 6th September, 1915, Bulgaria and Austria-Hungary concluded a treaty which recited that they had agreed to undertake common military action against Serbia and by which Austria-Hungary guaranteed to Bulgaria certain accretions of territory at Serbia's expense, and also agreed, jointly with Germany, to make to the Bulgarian Government a war loan of 200,000,000 fr., to be increased if the war lasted more than four months.²⁸ Even after this, M. Malinoff, one of the former Prime Ministers of Bulgaria, took part in negotiations with the *Entente*, and, while these negotiations were

²⁷ Memorandum I of the Serbian Delegation, Chapter II, para. c.

²⁸ Treaty between Bulgaria and Austria-Hungary, dated the 24th August, 1915 (furnished by the Serbian Delegation).

continuing, Bulgaria, on the 23rd September, mobilized, ostensibly to defend her neutrality.

No sooner had the army been mobilized and concentrated and Bulgarian forces massed on the whole length of the Serbian frontier, than the Bulgarian Government openly and categorically repudiated M. Malinoff, stating that he was in no way qualified to commit Bulgaria, and that he deserved "to be subjected to the utmost rigor of his country's laws for his conduct on that occasion." Some days later, Austro-German troops crossed the Danube and began to invade Serbia.

As soon as the Serbian troops began to retire, the Bulgars, on the pretext that the former had violated their frontier, launched the attack which eventually led to the complete subjugation of Serbia.

Two documents in the possession of the Serbian Government prove that this incident on the frontier was "arranged" and represented as a Serbian provocation. On the 10th October, 1915, the Secretary-General to the Foreign Office at Sofia, at the request of the Bulgarian Minister for Foreign Affairs, sent the following communication to Count Tarnovski, Austro-Hungarian Minister at Sofia: "In order to divest the attack on Serbia of the appearance of a preconceived plot, we shall, this evening or to-morrow morning, provoke a frontier incident in some uninhabited region."³⁹ Also, on the 12th October, 1915, Count Tarnovski sent the following telegram to Vienna: "The Generalissimo informs me that the desired incident on the Serbian frontier was arranged yesterday."⁴⁰

Bulgaria, in fact, first attacked on the 12th October, 1915, two days before the declaration of war on Serbia, which took place on the 14th October, 1915. That this was the case does not prevent Bulgaria from asserting that the Serbs first crossed her frontier.

The above sequence of events proves that Bulgaria had premeditated war against Serbia, and perfidiously brought it about.

By means of German agents Enver Pasha and Talaat Pasha had, since the spring of 1914, been aware of the Austro-German plan,

³⁹ Memorandum I of the Serbian Delegation, Chapter II, para. c.

⁴⁰ *Ibid.*

i.e., an attack by Austria against Serbia, the intervention by Germany against France, the passage through Belgium, the occupation of Paris in a fortnight, the closing of the Straits by Turkey, and the readiness of Bulgaria to take action.

The Sultan acknowledged this plot to one of his intimates. It was indeed nothing but a plot engineered by heads of four states against the independence of Serbia and the peace of Europe.⁴¹

CONCLUSIONS

1. *The war was premeditated by the Central Powers together with their Allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.*
2. *Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the Entente Powers and their repeated efforts to avoid war.*

II.—VIOLATION OF THE NEUTRALITY OF BELGIUM AND LUXEMBURG

A.—Belgium

Germany is burdened by a specially heavy responsibility in respect of the violation of the neutrality of Belgium and Luxemburg. Article 1 of the Treaty of London of the 19th April, 1839, after declaring that Belgium should form a "perpetually neutral State," had placed this neutrality under the protection of Austria, France, Great Britain, Russia and Prussia. On the 9th August, 1870, Prussia had declared "her fixed determination to respect Belgian neutrality." On the 22nd July, 1870, Bismarck wrote to the Belgian Minister at Paris, "This declaration is rendered superfluous by existing treaties."

It may be of interest to recall that the attributes of neutrality were specifically defined by the fifth Hague Convention, of the 18th October, 1907. That convention was declaratory of the law of nations, and contained these provisions—"The territory of neutral

⁴¹ Basri, *L'Orient débalkanisé*, Chapter II (Paris, 1919).

Powers is inviolable" (Article 1). "Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power" (Article 2). "The fact of a neutral Power resisting, even by force, attempts against its neutrality cannot be regarded as a hostile act" (Article 10).

There can be no doubt of the binding force of the treaties which guaranteed the neutrality of Belgium. There is equally no doubt of Belgium's sincerity or of the sincerity of France in their recognition and respect of this neutrality.

On the 29th July, 1914, the day following the declaration of war by Austria-Hungary against Serbia, Belgium put her army on its reinforced peace strength, and so advised the Powers by which her neutrality was guaranteed and also Holland and Luxemburg.⁴²

On the 31st July the French Minister at Brussels visited the Belgian Minister of Foreign Affairs to notify him of the state of war proclaimed in Germany, and he spontaneously made the following statement: "I seize this opportunity to declare that no incursion of French troops into Belgium will take place, even if considerable forces are massed upon the frontiers of your country. France does not wish to incur the responsibility, so far as Belgium is concerned, of taking the first hostile act. Instructions in this sense will be given to the French authorities."⁴³

On the 1st August, the Belgian Army was mobilized.⁴⁴

On the 31st July, the British Government had asked the French and German Governments separately if they were each of them ready to respect the neutrality of Belgium, provided that no other Power violated it.⁴⁵ In notifying the Belgian Government on the same day of the action taken by the British Government, the British Minister added: "In view of existing treaties, I am instructed to inform the Belgian Minister for Foreign Affairs of the above, and to say that Sir Edward Grey presumes that Belgium will do her utmost to maintain her neutrality, and that she desires and expects that the other Powers will respect and maintain it."⁴⁶ The imme-

⁴² Grey Book I, No. 8.

⁴³ *Ibid.*, No. 9.

⁴⁴ *Ibid.*, No. 10.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, No. 11.

diate and quite definite reply of the Belgian Minister of Foreign Affairs was that Great Britain and the other nations guaranteeing Belgian independence could rest assured that she would neglect no effort to maintain her neutrality.⁴⁷

On the same day, Paris and Berlin were officially asked the question to which reference was made in the British communication. At Paris the reply was categorical: "The French Government are resolved to respect the neutrality of Belgium, and it would only be in the event of some other Power violating that neutrality that France might find herself under the necessity, in order to assure the defence of her own security, to act otherwise."⁴⁸

On the same day as this reply was made at Paris, the French Minister at Brussels made the following communication to M. Davignon, the Belgian Minister of Foreign Affairs: "I am authorized to declare that, in the event of an international war, the French Government, in accordance with the declarations they have always made, will respect the neutrality of Belgium. In the event of this neutrality not being respected by another Power, the French Government, to secure their own defence, might find it necessary to modify their attitude."⁴⁹

It was decided that this communication should forthwith be made to the Belgian press.

Meanwhile the attitude of the German Government remained enigmatic. At Brussels the German Minister, Herr von Below, made efforts in his discussions to maintain confidence;⁵⁰ but at Berlin, in reply to the question which had been officially asked by the British Government, the Secretary of State informed the British Ambassador that "he must consult the Emperor and the Chancellor before he could possibly answer."⁵¹

On the 2nd August, in the course of the day, Herr von Below insisted to the Belgian Minister, M. Davignon, upon the feelings of security which Belgium had the right to entertain towards her eastern neighbor,⁵² and on the same day, at 7 o'clock in the evening, he

⁴⁷ Grey Book I, No. 11.

⁴⁸ Blue Book, No. 125.

⁴⁹ Grey Book I, No. 15.

⁵⁰ *Ibid.*, No. 19.

⁵¹ Blue Book, No. 122.

⁵² Grey Book I, No. 19.

sent him a "very confidential" note, which was nothing more than an ultimatum claiming free passage for German troops through Belgian territory.⁵³

It was impossible to be under any delusion as to the purely imaginary character of the reason alleged by the German Government in support of its demand. It pretended that it had reliable information leaving "no doubt as to the intention of France to move through Belgian territory" against Germany, and consequently had notified its decision to direct its forces to enter Belgium.⁵⁴

The facts themselves supply the answer to the German allegation that France intended to violate Belgian neutrality. According to the French plan of mobilization, the French forces were being concentrated at that very moment on the German frontier, and it was necessary, by reason of the situation created by the German violation of Belgian territory, to modify the arrangements for their transport.

In the meantime, at seven o'clock in the morning of the 3rd August, at the expiration of the time limit fixed by the ultimatum, Belgium had sent her reply to the German Minister. Affected neither by Germany's promises nor her threats, the Belgian Government boldly declared that an attack upon Belgian independence would constitute a flagrant violation of international law. "No strategic interest justifies such a violation of law. The Belgian Government, if they were to accept the proposals submitted to them, would sacrifice the honor of the nation and betray their duty towards Europe." In conclusion, the Belgian Government declared that they were "firmly resolved to repel by all the means in their power every attack upon their rights."⁵⁵

Even on the 3rd August, Belgium refused to appeal to the guarantee of the Powers until there was an actual violation of territory.⁵⁶ It was only on the 4th August, after German troops had entered Belgian territory, that the Belgian Government sent his passports to Herr von Below,⁵⁷ and it then appealed to Great Britain, France

⁵³ Grey Book I, No. 20.

⁵⁴ *Ibid.*, No. 20.

⁵⁵ *Ibid.*, No. 22.

⁵⁶ *Ibid.*, No. 24.

⁵⁷ *Ibid.*, No. 30.

and Russia to co-operate as guaranteeing Powers in the defence of her territory.⁵⁸

At this point it may be recalled that the pretext invoked by Germany in justification of the violation of Belgian neutrality, and the invasion of Belgian territory, seemed to the German Government itself of so little weight, that in Sir Edward Goschen's conversations with the German Chancellor, von Bethmann Hollweg, and with von Jagow, the Secretary of State, it was not a question of aggressive French intentions, but a "matter of life and death to Germany to advance through Belgium and violate the latter's neutrality," and of "a scrap of paper."⁵⁹ Further, in his speech on the 4th August, the German Chancellor made his well-known avowal: "Necessity knows no law. Our troops have occupied Luxemburg, and perhaps have already entered Belgian territory. Gentlemen, that is a breach of international law. . . . We have been obliged to refuse to pay attention to the justifiable protests of Belgium and Luxemburg. The wrong—I speak openly—the wrong we are thereby committing we will try to make good as soon as our military aims have been attained. He who is menaced, as we are, and is fighting for his all can only consider how he is to hack his way through." To this avowal of the German Chancellor there is added the overwhelming testimony of Count von Lerchenfeld, who stated in a report of the 4th August, 1914, that the German General Staff considered it "necessary to cross Belgium: France can only be successfully attacked from that side. At the risk of bringing about the intervention of England, Germany cannot respect Belgian neutrality."⁶⁰

As for the Austrian Government, it waited until the 28th August to declare war against Belgium,⁶¹ but as early as the middle of the month "the motor batteries sent by Austria have proved their excellence in the battles around Namur,"⁶² as appears from a proclama-

⁵⁸ Grey Book I, No. 42.

⁵⁹ Blue Book, No. 160.

⁶⁰ *Stenographische Berichte über die Verhandlungen des Reichstags, Dienstag, 4 August, 1914.* See also E. Mühler. *Des Weltkrieges und das Völkerrecht*, Berlin, G. Reimer, 1915, pp. 24 *et seq.*

⁶¹ Grey Book I, No. 77.

⁶² *Ibid.*, II, No. 104.

tion of the German general who at the time was in command of the fortress of Liège, which German troops had seized. Consequently, the participation of Austria-Hungary in the violation of Belgian neutrality is aggravated by the fact that she took part in that violation without any previous declaration of war.

B.—Luxemburg

The neutrality of Luxemburg was guaranteed by Article 2 of the Treaty of London, 11th May, 1867, Prussia and Austria-Hungary being two of the guarantor Powers. On the 2nd August, 1914, German troops penetrated the territory of the Grand Duchy. Mr. Eyschen, Minister of State of Luxemburg, immediately made an energetic protest.⁶³

The German Government alleged "that military measures had become inevitable, because trustworthy news had been received that French forces were marching on Luxemburg." This allegation was at once refuted by Mr. Eyschen.⁶⁴

CONCLUSION

The neutrality of Belgium, guaranteed by the treaties of the 19th April, 1839, and that of Luxemburg, guaranteed by the treaty of the 11th May, 1867, were deliberately violated by Germany and Austria-Hungary.

CHAPTER II

VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

On the second point submitted by the Conference, *the facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their allies on land, on sea, and in the air, during the present war*, the Commission has considered a large number of documents. The Report of the British Commission drawn up by Lord Bryce, the labors of the French Commission presided over

⁶³ Yellow Book, No. 131.

⁶⁴ Telegram to the German Ministry of Foreign Affairs, the 2nd August, 1914.

by M. Payelle, the numerous publications of the Belgian Government, the Memorandum submitted by the Belgian Delegation, the Memorandum of the Greek Delegation, the documents lodged by the Italian Government, the formal denunciation by the Greeks at the Conference of the crimes committed against Greek populations by the Bulgars, Turks and Greeks, the Memorandum of the Serbian Delegation, the Report of the Inter-Allied Commission on the violations of the Hague Conventions and of international law in general, committed between 1915 and 1918 by the Bulgars in occupied Serbia, the summary of the Polish Delegation, together with the Roumanian and Armenian Memoranda, supply abundant evidence of outrages of every description committed on land, at sea, and in the air, against the laws and customs of war and of the laws of humanity.

In spite of the explicit regulations, of established customs, and of the clear dictates of humanity, Germany and her allies have piled outrage upon outrage. Additions are daily and continually being made. By way of illustration a certain number of examples have been collected in Annex I.* It is impossible to imagine a list of cases so diverse and so painful. Violations of the rights of combatants, of the rights of civilians, and of the rights of both, are multiplied in this list of the most cruel practices which primitive barbarism, aided by all the resources of modern science, could devise for the execution of a system of terrorism carefully planned and carried out to the end. Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance. Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or

*Not printed herein for lack of space.—Ed.

the honor of individuals, the issue of counterfeit money reported by the Polish Government, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking list of crimes that has ever been drawn up to the eternal shame of those who committed them. The facts are established. They are numerous and so vouched for that they admit of no doubt and cry for justice. The Commission, impressed by their number and gravity, thinks there are good grounds for the constitution of a special commission, to collect and classify all outstanding information for the purpose of preparing a complete list of the charges under the following heads:

The following is the list arrived at:

- (1) Murders and massacres; systematic terrorism.
- (2) Putting hostages to death.
- (3) Torture of civilians.
- (4) Deliberate starvation of civilians.
- (5) Rape.
- (6) Abduction of girls and women for the purpose of enforced prostitution.
- (7) Deportation of civilians.
- (8) Internment of civilians under inhuman conditions.
- (9) Forced labor of civilians in connection with the military operations of the enemy.
- (10) Usurpation of sovereignty during military occupation.
- (11) Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- (12) Attempts to denationalize the inhabitants of occupied territory.
- (13) Pillage.
- (14) Confiscation of property.
- (15) Exaction of illegitimate or of exorbitant contributions and requisitions.
- (16) Debasement of the currency, and issue of spurious currency.
- (17) Imposition of collective penalties.

- (18) Wanton devastation and destruction of property.
- (19) Deliberate bombardment of undefended places.
- (20) Wanton destruction of religious, charitable, educational, and historic buildings and monuments.
- (21) Destruction of merchant ships and passenger vessels without warning and without provision for the safety of passengers or crew.
- (22) Destruction of fishing boats and of relief ships.
- (23) Deliberate bombardment of hospitals.
- (24) Attack on and destruction of hospital ships.
- (25) Breach of other rules relating to the Red Cross.
- (26) Use of deleterious and asphyxiating gases.
- (27) Use of explosive or expanding bullets, and other inhuman appliances.
- (28) Directions to give no quarter.
- (29) Ill-treatment of wounded and prisoners of war.
- (30) Employment of prisoners of war on unauthorized works.
- (31) Misuse of flags of truce.
- (32) Poisoning of wells.

The Commission desires to draw attention to the fact that the offences enumerated and the particulars given in Annex I are not regarded as complete and exhaustive; to these such additions can from time to time be made as may seem necessary.

CONCLUSIONS

1. The war was carried on by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity.

2. A commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its Allies, on land, on sea and in the air, in the course of the present war.

CHAPTER III

PERSONAL RESPONSIBILITY

The third point submitted by the Conference is thus stated:

The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed.

For the purpose of dealing with this point, it is not necessary to wait for proof attaching guilt to particular individuals. It is quite clear from the information now before the Commission that there are grave charges which must be brought and investigated by a court against a number of persons.

In these circumstances, the Commission desire to state expressly that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of heads of states. An argument has been raised to the contrary based upon the alleged immunity, and in particular the alleged inviolability, of a sovereign of a state. But this privilege, where it is recognized, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different.

We have later on in our Report proposed the establishment of a high tribunal composed of judges drawn from many nations, and included the possibility of the trial before that tribunal of a former head of a state with the consent of that state itself secured by articles in the Treaty of Peace. If the immunity of a sovereign is claimed to extend beyond the limits above stated, it would involve laying down the principle that the greatest outrages against the laws and customs of war and the laws of humanity, if proved against him, could in no circumstances be punished. Such a conclusion would shock the conscience of civilized mankind.

In view of the grave charges which may be preferred against—to take one case—the ex-Kaiser—the vindication of the principles of the laws and customs of war and the laws of humanity which have been violated would be incomplete if he were not brought to trial and if other offenders less highly placed were punished. Moreover, the trial of the offenders might be seriously prejudiced if they attempted and were able to plead the superior orders of a sovereign against whom no steps had been or were being taken.

There is little doubt that the ex-Kaiser and others in high authority were cognizant of and could at least have mitigated the barbarities committed during the course of the war. A word from them would have brought about a different method in the action of their subordinates on land, at sea and in the air.

We desire to say that civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.

CONCLUSION

All persons belonging to enemy countries, however high their position may have been, without distinction of rank, including Chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution.

CHAPTER IV

CONSTITUTION AND PROCEDURE OF AN APPROPRIATE TRIBUNAL

The fourth point submitted to the Commission is stated as follows:

The constitution and procedure of a tribunal appropriate for the trial of these offences (crimes relating to the war).

On this question the Commission is of opinion that, having regard to the multiplicity of crimes committed by those Powers which a short time before had on two occasions at The Hague protested their

reverence for right and their respect for the principles of humanity,⁶⁵ the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings.

Two classes of culpable acts present themselves:

(a) Acts which provoked the world war and accompanied its inception.

(b) Violations of the laws and customs of war and the laws of humanity.

(a) *Acts which Provoked the World War and Accompanied Its Inception.*

In this class the Commission has considered acts not strictly war crimes, but acts which provoked the war or accompanied its inception, such, to take outstanding examples, as the invasion of Luxemburg and Belgium.

The premeditation of a war of aggression, dissimulated under a peaceful pretence, then suddenly declared under false pretexts, is conduct which the public conscience reproves and which history will condemn, but by reason of the purely optional character of the institutions at The Hague for the maintenance of peace (International Commission of Inquiry, Mediation and Arbitration) a war of aggression may not be considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorized to consider under its terms of reference.

Further, any inquiry into the authorship of the war must, to be exhaustive, extend over events that have happened during many years in different European countries, and must raise many difficult

⁶⁵ See the declaration of Baron Marschall von Bieberstein, who, speaking at the Hague Conference of 1907 with regard to submarine mines, used the following expressions: "Military operations are not governed solely by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by the principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guarantee against abuses. The officers of the German Navy, I loudly proclaim it, will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization."

and complex problems which might be more fitly investigated by historians and statesmen than by a tribunal appropriate to the trial of offenders against the laws and customs of war. The need of prompt action is from this point of view important. Any tribunal appropriate to deal with the other offences to which reference is made might hardly be a good court to discuss and deal decisively with such a subject as the authorship of the war. The proceedings and discussions, charges and counter-charges, if adequately and dispassionately examined, might consume much time, and the result might conceivably confuse the simpler issues into which the tribunal will be charged to inquire. While this prolonged investigation was proceeding some witnesses might disappear, the recollection of others would become fainter and less trustworthy, offenders might escape, and the moral effect of tardily imposed punishment would be much less salutary than if punishment were inflicted while the memory of the wrongs done was still fresh and the demand for punishment was insistent.

We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal.

There can be no doubt that the invasion of Luxemburg by the Germans was a violation of the Treaty of London of 1867, and also that the invasion of Belgium was a violation of the Treaties of 1839. These treaties secured neutrality for Luxemburg and Belgium and in that term were included freedom, independence and security for the population living in those countries. They were contracts made between the high contracting parties to them, and involve an obligation which is recognized in international law.

The Treaty of 1839 with regard to Belgium and that of 1867 with regard to Luxemburg were deliberately violated, not by some outside Power, but by one of the very Powers which had undertaken not merely to respect their neutrality, but to compel its observance by any Power which might attack it. The neglect of its duty by the guarantor adds to the gravity of the failure to fulfil the undertaking given. It was the transformation of a security into a peril, of a defence into an attack, of a protection into an assault. It constitutes,

moreover, the absolute denial of the independence of states too weak to interpose a serious resistance, an assault upon the life of a nation which resists, an assault against its very existence while, before the resistance was made, the aggressor, in the guise of tempter, offered material compensations in return for the sacrifice of honor. The violation of international law was thus an aggravation of the attack upon the independence of states which is the fundamental principle of international right.

And thus a high-handed outrage was committed upon international engagements, deliberately, and for a purpose which cannot justify the conduct of those who were responsible.

The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals (and notably the ex-Kaiser) on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a formal condemnation by the Conference.

CONCLUSIONS

1. *The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.*

2. *On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.*

3. *On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.*

4. *It is desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.*

(b) *Violations of the Laws and Customs of War and of the Laws of Humanity*

Every belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of the crimes of which an enumeration has been given in Chapter II on Violations of the Laws and Customs of War, if such persons have been taken prisoners or have otherwise fallen into its power. Each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases. These courts would be able to try the incriminated persons according to their own procedure, and much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal.

There remain, however, a number of charges:

- (a) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several Allied nations, such as outrages committed in prison camps where prisoners of war of several nations were congregated or the crime of forced labor in mines where prisoners of more than one nationality were forced to work;
- (b) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct of operations against several of the Allied armies;
- (c) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of states, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defence for the actual perpetrators);
- (d) Against such other persons belonging to enemy countries as,

having regard to the character of the offence or the law of any belligerent country, it may be considered advisable not to proceed before a court other than the high tribunal hereafter referred to.

For the trial of outrages falling under these four categories the Commission is of opinion that a high tribunal is essential and should be established according to the following plan:

- (1) It shall be composed of three persons appointed by each of the following governments: The United States of America, the British Empire, France, Italy and Japan, and one person appointed by each of the following governments: Belgium, Greece, Poland, Portugal, Roumania, Serbia and Czecho-Slovakia. The members shall be selected by each country from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above.
- (2) The tribunal shall have power to appoint experts to assist it in the trial of any particular case or class of cases.
- (3) The law to be applied by the tribunal shall be "the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience."
- (4) When the accused is found by the tribunal to be guilty, the tribunal shall have the power to sentence him to such punishment or punishments as may be imposed for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person.
- (5) The tribunal shall determine its own procedure. It shall have power to sit in divisions of not less than five members and to request any national court to assume jurisdiction for the purpose of inquiry or for trial and judgment.
- (6) The duty of selecting the cases for trial before the tribunal and of directing and conducting prosecutions before it shall be imposed upon a Prosecuting Commission of five members, of whom one shall be appointed by the Governments of the

United States of America, the British Empire, France, Italy and Japan, and for the assistance of which any other government may delegate a representative.

- (7) Applications by any Allied or Associated Government for the trial before the tribunal of any offender who has not been delivered up or who is at the disposition of some other Allied or Associated Government shall be addressed to the Prosecuting Commission, and a national court shall not proceed with the trial of any person who is selected for trial before the tribunal, but shall permit such person to be dealt with as directed by the Prosecuting Commission.
- (8) No person shall be liable to be tried by a national court for an offence in respect of which charges have been preferred before the tribunal, but no trial or sentence by a court of an enemy country shall bar trial and sentence by the tribunal or by a national court belonging to one of the Allied or Associated States.

CONCLUSIONS

The Commission has consequently the honor to recommend:

- 1. *That a high tribunal be constituted as above set out.*
- 2. *That it shall be provided by the treaty of peace:*
 - (a) *That the enemy governments shall, notwithstanding that peace may have been declared, recognize the jurisdiction of the national tribunals and the high tribunal, that all enemy persons alleged to have been guilty of offences against the laws and customs of war and the laws of humanity shall be excluded from any amnesty to which the belligerents may agree, and that the governments of such persons shall undertake to surrender them to be tried.*
 - (b) *That the enemy governments shall undertake to deliver up and give in such manner as may be determined thereby:*
 - (i) *The names of all persons in command or charge of or in any way exercising authority in or over all civilian internment camps, prisoner-of-war camps, branch camps, working*

camps and "commandoes" and other places where prisoners were confined in any of their dominions or in territory at any time occupied by them, with respect to which such information is required, and all orders and instructions or copies of orders or instructions and reports in their possession or under their control relating to the administration and discipline of all such places in respect of which the supply of such documents as aforesaid shall be demanded;

- (ii) All orders, instructions, copies of orders and instructions, General Staff plans of campaign, proceedings in naval or military courts and courts of inquiry, reports and other documents in their possession or under their control which relate to acts or operations, whether in their dominions or in territory at any time occupied by them, which shall be alleged to have been done or carried out in breach of the laws and customs of war and the laws of humanity;*
 - (iii) Such information as will indicate the persons who committed or were responsible for such acts or operations;*
 - (iv) All logs, charts, reports and other documents relating to operations by submarines;*
 - (v) All orders issued to submarines, with details or scope of operations by these vessels;*
 - (vi) Such reports and other documents as may be demanded relating to operations alleged to have been conducted by enemy ships and their crews during the war contrary to the laws and customs of war and the laws of humanity.*
- 3. That each Allied and Associated Government adopt such legislation as may be necessary to support the jurisdiction of the international court, and to assure the carrying out of its sentences.*
- 4. That the five states represented on the Prosecuting Commission shall jointly approach neutral governments with a view to obtaining the surrender for trial of persons within their territories who are charged by such states with violations of the laws and customs of war and the laws of humanity.*

CHAPTER V

COGNATE MATTERS

Finally, the Commission was asked to consider any other matters cognate or ancillary to the above which may arise in the course of the inquiry, and which the Commission finds it useful and relevant to take into consideration.

Under this head the Commission has considered it advisable to draft a set of provisions for insertion in the Preliminaries of Peace, for the assuring in practical form, in accordance with the recommendations at the end of the last chapter, the constitution, the recognition, and the mode of operation of the high Tribunal, and of the national tribunals which will be called to try infractions of the laws and customs of war or the laws of humanity.

The text of these provisions is set out in Annex IV.

March 29, 1919.

United States of America:

Subject to the reservations set forth in the annexed Memorandum. (Annex II.)

ROBERT LANSING.

JAMES BROWN SCOTT.

British Empire:

ERNEST M. POLLOCK.

W. F. MASSEY.

France:

A. TARDIEU.

F. LARNAUDE.

Italy:

V. SCIALOJA.

M. D'AMELIO.

Japan:

Subject to the reservations set
forth in the annexed Memo-
randum. (Annex III.)

M. ADATCI.

S. TACHI.

Belgium:

ROLIN-JAEQUEMYS.

Greece:

N. POLITIS.

Poland:

L. LUBIENSKI.

Roumania:

S. ROSENTAL.

Serbia:

SLOBODAN YOVANOVITCH.

ANNEX I.

**SUMMARY OF EXAMPLES OF OFFENCES COMMITTED BY THE AUTHORITIES
OR FORCES OF THE CENTRAL EMPIRES AND THEIR ALLIES AGAINST
THE LAWS AND CUSTOMS OF WAR AND THE LAWS OF HUMANITY**

[Thirty pages of details of the thirty-two classes of crimes listed on pp. 114-115 omitted for lack of space.]

ANNEX II.

**MEMORANDUM OF RESERVATIONS PRESENTED BY THE REPRESENTATIVES
OF THE UNITED STATES TO THE REPORT OF THE
COMMISSION ON RESPONSIBILITIES**

April 4, 1919.

The American members of the Commission on Responsibilities, in presenting their reservations to the report of the Commission, declare that they are as earnestly desirous as the other members of the Commission that those persons responsible for causing the Great War and those responsible for violations of the laws and customs of war should be punished for their crimes, moral and legal. The differences which have arisen between them and their colleagues lie in the means of accomplishing this common desire. The American members therefore submit to the Conference on the Preliminaries of Peace a memorandum of the reasons for their dissent from the report of the Commission and from certain provisions for insertion in treaties with enemy countries, as stated in Annex IV, and suggestions as to the cause of action which they consider should be adopted in dealing with the subjects upon which the Commission on Responsibilities was directed to report.

Preliminary to a consideration of the points at issue and the irreconcilable differences which have developed and which make this dissenting report necessary, we desire to express our high appreciation of the conciliatory and considerate spirit manifested by our colleagues throughout the many and protracted sessions of the Commission.

From the first of these, held on February 3, 1919, there was an earnest purpose shown to compose the differences which existed, to find a formula acceptable to all, and to render, if possible, a unanimous report. That this purpose failed was not because of want of effort on the part of any member of the Commission. It failed because, after all the proposed means of adjustment had been tested with frank and open minds, no practicable way could be found to harmonize the differences without an abandonment of principles which were fundamental. This the representatives of the United States could not do and they could not expect it of others.

In the early meetings of the Commission and the three Sub-Commissions appointed to consider various phases of the subject submitted to the Commission, the American members declared that there were two classes of responsibilities, those of a legal nature and those of a moral nature, that legal offences were justiciable and liable to trial and punishment by appropriate tribunals, but that moral offences, however iniquitous and infamous and however terrible in their results, were beyond the reach of judicial procedure, and subject only to moral sanctions.

While this principle seems to have been adopted by the Commission in the report so far as the responsibility for the authorship of the war is concerned, the Commission appeared unwilling to apply it in the case of indirect responsibility for violations of the laws and customs of war committed after the outbreak of the war and during its course. It is respectfully submitted that this inconsistency was due in large measure to a determination to punish certain persons, high in authority, particularly the heads of enemy states, even though heads of states were not hitherto legally responsible for the atrocious acts committed by subordinate authorities. To such an inconsistency the American members of the Commission were unwilling to assent, and from the time it developed that this was the unchangeable determination of certain members of the Commission they doubted the possibility of a unanimous report. Nevertheless, they continued their efforts on behalf of the adoption of a consistent basis of principle, appreciating the desirability of unanimity if it could be attained. That their efforts were futile they deeply regret.

With the manifest purpose of trying and punishing those persons to whom reference has been made, it was proposed to create a high tribunal with an international character, and to bring before it those who had been marked as responsible, not only for directly ordering illegal acts of war, but for having abstained from preventing such illegal acts.

Appreciating the importance of a judicial proceeding of this nature, as well as its novelty, the American representatives laid before the Commission a memorandum upon the constitution and procedure of a tribunal of an international character which, in their opinion, should be formed by the union of existing national military tribunals or commissions of admitted competence in the premises. And in view of the fact that "customs" as well as "laws" were to be considered, they filed another memorandum, attached hereto, as to the principles which should, in their opinion, guide the Commission in considering and reporting on this subject.

The practice proposed in the memorandum as to the military commissions was in part accepted, but the purpose of constituting a high tribunal for the trial of persons exercising sovereign rights was persisted in, and the abstention from preventing violations of the laws and customs of war and of humanity was insisted upon. It was frankly stated that the purpose was to bring before this tribunal the ex-Kaiser of Germany, and that the jurisdiction of the tribunals must be broad enough to include him even if he had not directly ordered the violations.

To the unprecedented proposal of creating an international criminal tribunal and to the doctrine of negative criminality the American members refused to give their assent.

On January 25, 1919, the Conference on the Preliminaries of Peace in plenary session recommended the appointment of a Commission to examine and to report to the Conference upon the following five points:

1. The responsibility of the authors of the war.
2. The facts as to the violations of the laws and customs of war committed by the forces of the German Empire and its allies, on land, on sea, and in the air during the present war.

3. The degree of responsibility for these crimes attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above points which may arise in the course of the inquiry, and which the Commission finds it useful and relevant to take into consideration.

I.

The conclusions reached by the Commission as to the responsibility of the authors of the war, with which the representatives of the United States agree, are thus stated:

The war was premeditated by the Central Powers, together with their Allies, Turkey and Bulgaria, and was the result of acts deliberately committed in order to make it unavoidable.

Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the *Entente* Powers and their repeated efforts to avoid war.

The American representatives are happy to declare that they not only concur in these conclusions, but also in the process of reasoning by which they are reached and justified. However, in addition to the evidence adduced by the Commission, based for the most part upon official memoranda issued by the various governments in justification of their respective attitudes towards the Serbian question and the war which resulted because of the deliberate determination of Austria-Hungary and Germany to crush that gallant little country which blocked the way to the Dardanelles and to the realization of their larger ambitions, the American representatives call attention to four documents, three of which have been made known by His Excellency Milenko R. Vesnitch, Serbian Minister at Paris. Of the three, the first is reproduced for the first time, and two of the others were only published during the sessions of the Commission.

The first of these documents is a report of Von Wiesner, the

Austro-Hungarian agent sent to Serajevo to investigate the assassination at that place on June 28, 1914, of the Archduke Francis Ferdinand, heir to the Austro-Hungarian throne, and the Duchess of Hohenberg, hismorganatic wife.

The material portion of this report, in the form of a telegram, is as follows:

Herr von Wiesner, to the Foreign Ministry, Vienna.

Serajevo, July 13, 1914, 1.10 p. m.

Cognizance on the part of the Serbian Government, participation in the murderous assault, or in its preparation, and supplying the weapons, proved by nothing, nor even to be suspected. On the contrary there are indications which cause this to be rejected.⁶⁶

The second is likewise a telegram, dated Berlin, July 25, 1914, from Count Szöegeny, Austro-Hungarian Ambassador at Berlin, to the Minister of Foreign Affairs at Vienna, and reads as follows:

Here it is generally taken for granted that in case of a possible refusal on the part of Serbia, our immediate declaration of war will be coincident with military operations.

Delay in beginning military operations is here considered as a great danger because of the intervention of other Powers.

We are urgently advised to proceed at once and to confront the world with a *fait accompli*.⁶⁷

⁶⁶ *Herr v. Wiesner an Ministerium des Aeussern in Wien.*

Sarajevo, 13. Juli 1914, 1.10 p.m.

Mitwissenschaft serbischer Regierung, Leitung an Attentat oder dessen Vorbereitung und Beistellung der Waffen, durch nichts erwiesen oder auch nur zu vermuten. Es bestehen vielmehr Anhaltspunkte, dies als ausgeschlossen anzusehen.

⁶⁷ *Graf Szöegeny an Minister des Aeussern in Wien.*

(285.)

Berlin, 25. Juli 1914.

Hier wird allgemein vorausgesetzt, dass auf eventuelle abweisende Antwort Serbiens sofort unsere Kriegserklärung verbunden mit kriegerischen Operationen erfolgen werde.

Man sieht hier in jeder Verzögerung des Beginnes der kriegerischen Operationen grosse Gefahr betreffs Einmischung anderer Mächte.

Man rät uns dringendst sofort vorzugehen und Welt vor ein *fait accompli* zu stellen.

The third, likewise a telegram in cipher, marked "strictly confidential," and dated Berlin, July 27, 1914, two days after the Serbian reply to the Austro-Hungarian ultimatum and the day before the Austro-Hungarian declaration of war upon that devoted kingdom, was from the Austro-Hungarian Ambassador at Berlin to the Minister of Foreign Affairs at Vienna. The material portion of this document is as follows:

The Secretary of State informed me very definitely and in the strictest confidence that in the near future possible proposals for mediation on the part of England would be brought to Your Excellency's knowledge by the German Government.

The German Government gives its most binding assurance that *it does not in any way associate itself with the proposals*; on the contrary, it is absolutely opposed to their consideration and only transmits them in compliance with the English request.⁶⁸

Of the English propositions, to which reference is made in the above telegram, the following may be quoted, which, under date July 30, 1914, Sir Edward Grey, Secretary of State for Foreign Affairs, telegraphed to Sir Edward Goschen, British Ambassador at Berlin:

If the peace of Europe can be preserved, and the present crisis safely passed, my own endeavour will be to promote some arrangement to which Germany could be a party, by which she could be assured that no aggressive or hostile policy would be pursued against her or her allies by France, Russia, and ourselves, jointly or separately.⁶⁹

While comment upon these telegrams would only tend to weaken their force and effect, it may nevertheless be observed that the last of them was dated two days before the declaration of war by Ger-

⁶⁸ *Graf Szoegeny an Ministerium des Aeussern in Wien.*

(307, Streng vertraulich.)

Berlin, 27. Juli 1914.

Staatssekretär erklärte mir in streng vertraulicher Form sehr entschieden, dass in der nächsten Zeit eventuelle Vermittlungsvorschläge Englands durch die deutsche Regierung zur Kenntnis Euer Exc. gebracht würden.

Die deutsche Regierung versichere auf das Bündigste, dass sie sich in keiner Weise mit den Vorschlägen identificire, sogar entschieden gegen derer Berücksichtigung sei, und dieselben nur, um der englischen Bitte Rechnung zu tragen, weitergebe.

⁶⁹ British Parliamentary Papers, Miscellaneous, No. 10 (1915), "Collected Documents relating to the Outbreak of the European War," p. 78.

many against Russia, which might have been prevented, had not Germany, flushed with the hope of certain victory and of the fruits of conquest, determined to force the war.

The report of the Commission treats separately the violation of the neutrality of Belgium and of Luxemburg, and reaches the conclusion, in which the American representatives concur, that the neutrality of both of these countries was deliberately violated. The American representatives believe, however, that it is not enough to state or to hold with the Commission that "the war was premeditated by the Central Powers," that "Germany, in agreement with Austria-Hungary, deliberately worked to defeat all the many conciliatory proposals made by the *Entente* Powers and their repeated efforts to avoid war," and to declare that the neutrality of Belgium, guaranteed by the treaty of the 19th of April, 1839, and that of Luxemburg, guaranteed by the treaty of the 11th of May, 1867, were deliberately violated by Germany and Austria-Hungary. They are of the opinion that these acts should be condemned in no uncertain terms and that their perpetrators should be held up to the execration of mankind.

II

The second question submitted by the Conference to the Commission requires an investigation of and report upon "the facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air, during the present war." It has been deemed advisable to quote again the exact language of the submission in that it is at once the authority for and the limitation of the investigation and report to be made by the Commission. Facts were to be gathered, but these facts were to be not of a general but of a very specific kind, and were to relate to the violations or "breaches of the laws and customs of war." The duty of the Commission was, therefore, to determine whether the facts found were violations of the laws and customs of war. It was not asked whether these facts were violations of the laws or of the principles of humanity. Nevertheless, the report of the Commission does not, as in the opinion of the American represen-

tatives it should, confine itself to the ascertainment of the facts and to their violation of the laws and customs of war, but, going beyond the terms of the mandate, declares that the facts found and acts committed were in violation of the laws and of the elementary principles of humanity. The laws and customs of war are a standard certain, to be found in books of authority and in the practice of nations. The laws and principles of humanity vary with the individual, which, if for no other reason, should exclude them from consideration in a court of justice, especially one charged with the administration of criminal law. The American representatives, therefore, objected to the references to the laws and principles of humanity, to be found in the report, in what they believed was meant to be a judicial proceeding, as, in their opinion, the facts found were to be violations or breaches of the laws and customs of war, and the persons singled out for trial and punishment for acts committed during the war were only to be those persons guilty of acts which should have been committed in violation of the laws and customs of war. With this reservation as to the invocation of the principles of humanity, the American representatives are in substantial accord with the conclusions reached by the Commission on this head that:

1. The war was carried on by the Central Empires, together with their Allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary principles of humanity.
2. A Commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its allies, on land, on sea, and in the air, in the course of the present war.

However, in view of the recommendation that a Commission be appointed to collect further information, the American representatives believe that they should content themselves with a mere expression of concurrence as to the statements contained in the report upon which these conclusions are based.

III

The third question submitted to the Commission on Responsibilities requires an expression of opinion concerning "the degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed." The conclusions which the Commission reached, and which is stated in the report, is to the effect that "all persons belonging to enemy countries, however high their position may have been, without distinction of rank, including chiefs of states, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution." The American representatives are unable to agree with this conclusion, in so far as it subjects to criminal, and, therefore, to legal prosecution, persons accused of offences against "the laws of humanity," and in so far as it subjects chiefs of states to a degree of responsibility hitherto unknown to municipal or international law, for which no precedents are to be found in the modern practice of nations.

Omitting for the present the question of criminal liability for offences against the laws of humanity, which will be considered in connection with the law to be administered in the national tribunals and the high court, whose constitution is recommended by the Commission, and likewise reserving for discussion in connection with the high court the question of the liability of a chief of state to criminal prosecution, a reference may properly be made in this place to the masterly and hitherto unanswered opinion of Chief Justice Marshall, in the case of the *Schooner Exchange v. McFaddon and Others* (7 Cranch, 116), decided by the Supreme Court of the United States in 1812, in which the reasons are given for the exemption of the sovereign and of the sovereign agent of a state from judicial process. This does not mean that the head of the state, whether he be called emperor, king, or chief executive, is not responsible for breaches of the law, but that he is responsible not to the judicial but to the political authority of his country. His act may and does bind his country and render it responsible for the acts which he has committed in its

name and its behalf, or under cover of its authority; but he is, and it is submitted that he should be, only responsible to his country, as otherwise to hold would be to subject to foreign countries, a chief executive, thus withdrawing him from the laws of his country, even its organic laws, to which he owes obedience, and subordinating him to foreign jurisdictions to which neither he nor his country owes allegiance or obedience, thus denying the very conception of sovereignty.

But the law to which the head of the state is responsible is the law of his country, not the law of a foreign country or group of countries; the tribunal to which he is responsible is the tribunal of his country, not of a foreign country or group of countries, and the punishment to be inflicted is the punishment prescribed by the law in force at the time of the commission of the act, not a punishment created after the commission of the act.

These observations the American representatives believe to be applicable to a head of a state actually in office and engaged in the performance of his duties. They do not apply to a head of a state who has abdicated or has been repudiated by his people. Proceedings against him might be wise or unwise, but in any event they would be against an individual out of office and not against an individual in office and thus in effect against the state.

The American representatives also believe that the above observations apply to liability of the head of a state for violations of positive law in the strict and legal sense of the term. They are not intended to apply to what may be called political offences and to political sanctions.

These are matters for statesmen, not for judges, and it is for them to determine whether or not the violators of the treaties guaranteeing the neutrality of Belgium and of Luxemburg should be subjected to a political sanction.

However, as questions of this kind seem to be beyond the mandate of the Conference, the American representatives consider it unnecessary to enter upon their discussion.

IV

The fourth question calls for an investigation of and a report upon "the constitution and procedure of a tribunal appropriate for the trial of these offences." Apparently the Conference had in mind the violations of the laws and customs of war, inasmuch as the Commission is required by the third submission to report upon "the degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed." The fourth point relates to the constitution and procedure of a tribunal appropriate for the investigation of these crimes, and to the trial and punishment of the persons accused of their commission, should they be found guilty. The Commission seems to have been of the opinion that the tribunal referred to in the fourth point was to deal with the crimes specified in the second and third submissions, not with the responsibility of the authors of the war, as appears from the following statement taken from the report:

On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Luxemburg and of Belgium, the Commission is of the opinion that it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

This section of the report, however, deals not only with the laws and customs of war—improperly adding "and of the laws of humanity"—but also with the "acts which provoked the war and accompanied its inception," which either in whole or in part would appear to fall more appropriately under the first submission relating to the "responsibility of the authors of the war."

Of the acts which provoked the war and accompanied its inception, the Commission, with special reference to the violation of the neutrality of Luxemburg and of Belgium, says: "We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal." And

a little later in the same section the report continues: "The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals, and notably the ex-Kaiser, on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a *formal condemnation by the Conference*." The American representatives are in thorough accord with these views, which are thus formally stated in the first two of the four conclusions under this heading:

The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.

On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.

If the report had stopped here, the American representatives would be able to concur in the conclusions under this heading and the reasoning by which they were justified, for hitherto the authors of war, however unjust it may be in the forum of morals, have not been brought before a court of justice upon a criminal charge for trial and punishment. The report specifically states: (1) that "a war of aggression may not be considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorized to consider under its terms of reference"; the Commission refused to advise (2) "that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal"; it further holds (3) that "no criminal charge can be made against the responsible authorities or individuals, and notably the ex-Kaiser, on the special head of these breaches of neutrality." The American representatives, accepting each of these statements as sound and unanswerable, are nevertheless unable to agree with the third of the conclusions based upon them:

On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.

The American representatives believe that this conclusion is inconsistent both with the reasoning of the section and with the first and second conclusions, and that "in a matter so unprecedented," to quote the exact language of the third conclusion, they are relieved from comment and criticism. However, they observe that, if the acts in question are criminal in the sense that they are punishable under law, they do not understand why the report should not advise that these acts be punished in accordance with the terms of the law. If, on the other hand, there is no law making them crimes or affixing a penalty for their commission, they are moral, not legal, crimes, and the American representatives fail to see the advisability or indeed the appropriateness of creating a special organ to deal with the authors of such acts. In any event, the organ in question should not be a judicial tribunal.

In order to meet the evident desire of the Commission that a special organ be created, without however doing violence to their own scruples in the premises, the American representatives proposed—

The Commission on Responsibilities recommends that:

1. A Commission of Inquiry be established to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.
2. The Commission of Inquiry to consist of two members of the five following Powers: United States of America, British Empire, France, Italy, and Japan; and one member from each of the five following Powers: Belgium, Greece, Portugal, Roumania, and Serbia.
3. The enemy be required to place their archives at the disposal of the Commission, which shall forthwith enter upon its duties and report jointly and separately to their respective governments on the 11th November, 1919, or as soon thereafter as practicable.

The Commission, however, failed to adopt this proposal.

The fourth and final conclusion under this heading declares it to be "desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law." With this conclusion the American representatives find themselves to be in substantial accord. They believe that any nation going to war assumes a grave responsibility, and that a nation engaging in a war of aggression commits a crime. They hold that the neutrality of nations should be observed, especially when it is guaranteed by a treaty to which the nations violating it are parties, and that the plighted word and the good faith of nations should be faithfully observed in this as in all other respects. At the same time, given the difficulty of determining whether an act is in reality one of aggression or of defence, and given also the difficulty of framing penal sanctions, where the consequences are so great or may be so great as to be incalculable, they hesitate as to the feasibility of this conclusion, from which, however, they are unwilling formally to dissent.

With the portion of the report devoted to the "constitution and procedure of a tribunal appropriate for the trial of these offences," the American representatives are unable to agree, and their views differ so fundamentally and so radically from those of the Commission that they found themselves obliged to oppose the views of their colleagues in the Commission and to dissent from the statement of those views as recorded in the report. The American representatives, however, agree with the introductory paragraph of this section, in which it is stated that "every belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of the crimes" constituting violations of the laws and customs of war, "if such persons have been taken prisoners or have otherwise fallen into its power." The American representatives are likewise in thorough accord with the further provisions that "each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases." The American representatives concur in the view that "these courts would be able to try the incriminated persons according to their own pro-

cedure," and also in the conclusion that "much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal," supposing that the single tribunal could and should be created. In fact, these statements are not only in accord with but are based upon the memorandum submitted by the American representatives, advocating the utilization of the military commissions or tribunals either existing or which could be created in each of the belligerent countries, with jurisdiction to pass upon offences against the laws and customs of war committed by the respective enemies.

This memorandum already referred to in an earlier paragraph is as follows:

1. That the military authorities, being charged with the interpretation of the laws and customs of war, possess jurisdiction to determine and punish violations thereof;
2. That the military jurisdiction for the trial of persons accused of violations of the laws and customs of war and for the punishment of persons found guilty of such offences is exercised by military tribunals;
3. That the jurisdiction of a military tribunal over a person accused of the violation of a law or custom of war is acquired when the offence was committed on the territory of the nation creating the military tribunal or when the person or property injured by the offence is of the same nationality as the military tribunal;
4. That the law and procedure to be applied and followed in determining and punishing violations of the laws and customs of war are the law and the procedure for determining and punishing such violations established by the military law of the country against which the offence is committed; and
5. That in case of acts violating the laws and customs of war involving more than one country, the military tribunals of the countries affected may be united, thus forming an international tribunal for the trial and punishment of persons charged with the commission of such offences.

In a matter of such importance affecting not one but many countries and calculated to influence their future conduct, the

American representatives believed that the nations should use the machinery at hand, which had been tried and found competent, with a law and a procedure framed and therefore known in advance, rather than to create an international tribunal with a criminal jurisdiction for which there is no precedent, precept, practice, or procedure. They further believed that, if an act violating the laws and customs of war committed by the enemy affected more than one country, a tribunal could be formed of the countries affected by uniting the national commissions or courts thereof, in which event the tribunal would be formed by the mere assemblage of the members, bringing with them the law to be applied; namely, the laws and customs of war, and the procedure, namely, the procedure of the national commissions or courts. The American representatives had especially in mind the case of Henry Wirz, commandant of the Confederate prison at Andersonville, Georgia, during the war between the States, who, after that war, was tried by a military commission, sitting in the city of Washington, for crimes contrary to the laws and customs of war, convicted thereof, sentenced to be executed, and actually executed on the 11th November, 1865.

While the American representatives would have preferred a national military commission or court in each country, for which the Wirz case furnished ample precedent, they were willing to concede that it might be advisable to have a commission of representatives of the competent national tribunals to pass upon the charges, as stated in the report:

- (a) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several Allied nations, such as outrages committed in prison camps where prisoners of war of several nations were congregated or the crime of forced labor in mines where prisoners of more than one nationality were forced to work.
- (b) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct towards several of the Allied armies.

The American representatives are, however, unable to agree that a mixed commission thus composed should, in the language of the report, entertain charges:

- (c) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of states, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war, it being understood that no such abstention shall constitute a defence for the actual perpetrators.

In an earlier stage of the general report, indeed, until its final revision, such persons were declared liable because they "abstained from preventing, putting an end to, or repressing, violations of the laws or customs of war." To this criterion of liability the American representatives were unalterably opposed. It is one thing to punish a person who committed, or, possessing the authority, ordered others to commit an act constituting a crime; it is quite another thing to punish a person who failed to prevent, to put an end to, or to repress violations of the laws or customs of war. In one case the individual acts or orders others to act, and in so doing commits a positive offence. In the other he is to be punished for the acts of others without proof being given that he knew of the commission of the acts in question or that, knowing them, he could have prevented their commission. To establish responsibility in such cases it is elementary that the individual sought to be punished should have knowledge of the commission of the acts of a criminal nature and that he should have possessed the power as well as the authority to prevent, to put an end to, or repress them. Neither knowledge of commission nor ability to prevent is alone sufficient. The duty or obligation to act is essential. They must exist in conjunction, and a standard of liability which does not include them all is to be rejected. The difficulty in the matter of abstention was felt by the Commission, as to make abstention punishable might tend to exonerate the person actually committing the act. Therefore the standard of liability to which the American representatives objected are modified in the last sessions of the

Commission, and the much less objectionable text, as stated above, was adopted and substituted for the earlier and wholly inadmissible one.

There remain, however, two reasons, which, if others were lacking, would prevent the American representatives from consenting to the tribunal recommended by the Commission. The first of these is the uncertainty of the law to be administered, in that liability is made to depend not only upon violations of the laws and customs of war, but also upon violations "of the laws of humanity." The second of these reasons is that heads of states are included within the civil and military authorities of the enemy countries to be tried and punished for violations of the laws and customs of war and of the laws of humanity. The American representatives believe that the Commission has exceeded its mandate in extending liability to violations of the laws of humanity, inasmuch as the facts to be examined are solely violations of the laws and customs of war. They also believe that the Commission erred in seeking to subject heads of states to trial and punishment by a tribunal to whose jurisdiction they were not subject when the alleged offences were committed.

As pointed out by the American representatives on more than one occasion, war was and is by its very nature inhuman, but acts consistent with the laws and customs of war, although these acts are inhuman, are nevertheless not the object of punishment by a court of justice. A judicial tribunal only deals with existing law and only administers existing law, leaving to another forum infractions of the moral law and actions contrary to the laws and principles of humanity. A further objection lies in the fact that the laws and principles of humanity are not certain, varying with time, place, and circumstance, and according, it may be, to the conscience of the individual judge. There is no fixed and universal standard of humanity. The law of humanity, or the principle of humanity, is much like equity, whereof John Selden, as wise and cautious as he was learned, aptly said:

Equity is a roguish thing. For Law we have a measure, know what to trust to; Equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is Equity. 'Tis

all one as if they should make the standard for the measure we call a "foot" a Chancellor's foot; what an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis the same thing in the Chancellor's conscience.

While recognizing that offences against the laws and customs of war might be tried before and the perpetrators punished by national tribunals, the Commission was of the opinion that the graver charges and those involving more than one country should be tried before an international body, to be called the High Tribunal, which "shall be composed of three persons appointed by each of the following governments: The United States of America, the British Empire, France, Italy, and Japan, and one person appointed by each of the following governments: Belgium, Greece, Poland, Portugal, Roumania, Serbia, and Czecho-Slovakia"; the members of this tribunal to be selected by each country "from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above." The law to be applied is declared by the Commission to be "the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience." The punishment to be inflicted is that which may be imposed "for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person." The cases selected for trial are to be determined and the prosecutions directed by "a prosecuting commission" composed of a representative of the United States of America, the British Empire, France, Italy, and Japan, to be assisted by a representative of one of the other governments, presumably a party to the creation of the court or represented in it.

The American representatives felt very strongly that too great attention could not be devoted to the creation of an international criminal court for the trial of individuals, for which a precedent is lacking, and which appears to be unknown in the practice of nations. They were of the opinion that an act could not be a crime in the legal sense of the word, unless it were made so by law, and that the commission of an act declared to be a crime by law could not be punished unless the law prescribed the penalty to be inflicted. They

were perhaps more conscious than their colleagues of the difficulties involved, inasmuch as this question was one that had arisen in the American Union composed of States, and where it had been held in the leading case of *United States v. Hudson* (7 Cranch, 32), decided by the Supreme Court of the United States in 1812, that "the legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence." What is true of the American States must be true of this looser union which we call the Society of Nations. The American representatives know of no international statute or convention making a violation of the laws and customs of war—not to speak of the laws or principles of humanity—an international crime, affixing a punishment to it, and declaring the court which has jurisdiction over the offence. They felt, however, that the difficulty, however great, was not insurmountable, inasmuch as the various states have declared certain acts violating the laws and customs of war to be crimes, affixing punishments to their commission, and providing military courts or commissions within the respective states possessing jurisdiction over such offence. They were advised that each of the Allied and Associated states could create such a tribunal, if it had not already done so. Here then was at hand a series of existing tribunal or tribunals that could lawfully be called into existence in each of the Allied or Associated countries by the exercise of their sovereign powers, appropriate for the trial and punishment within their respective jurisdictions of persons of enemy nationality, who during the war committed acts contrary to the laws and customs of war, in so far as such acts affected the persons or property of their subjects or citizens, whether such acts were committed within portions of their territory occupied by the enemy or by the enemy within its own jurisdiction.

The American representatives therefore proposed that acts affecting the persons or property of one of the Allied or Associated Governments should be tried by a military tribunal of that country; that acts involving more than one country, such as treatment by Germany of prisoners contrary to the usages and customs of war, could be tried by a tribunal either made up of the competent tribunals of

the countries affected or of a commission thereof possessing their authority. In this way existing national tribunals or national commissions which could legally be called into being would be utilized, and not only the law and the penalty would be already declared, but the procedure would be settled.

It seemed elementary to the American representatives that a country could not take part in the trial and punishment of a violation of the laws and customs of war committed by Germany and her Allies before the particular country in question had become a party to the war against Germany and her Allies; that consequently the United States could not institute a military tribunal within its own jurisdiction to pass upon violations of the laws and customs of war, unless such violations were committed upon American persons or American property, and that the United States could not properly take part in the trial and punishment of persons accused of violations of the laws and customs of war committed by the military or civil authorities of Bulgaria or Turkey.

Under these conditions and with these limitations the American representatives considered that the United States might be a party to a high tribunal, which they would have preferred to call, because of its composition, the Mixed or United Tribunal or Commission. They were averse to the creation of a new tribunal, of a new law, of a new penalty, which would be *ex post facto* in nature, and thus contrary to an express clause of the Constitution of the United States and in conflict with the law and practice of civilized communities. They believed, however, that the United States could co-operate to this extent by the utilization of existing tribunals, existing laws, and existing penalties. However, the possibility of co-operating was frustrated by the insistence on the part of the majority that criminal liability should, in excess of the mandate of the Conference, attach to the laws and principles of humanity, in addition to the laws and customs of war, and that the jurisdiction of the high court should be specifically extended to "the heads of states."

In regard to the latter point, it will be observed that the American representatives did not deny the responsibility of the heads of states for acts which they may have committed in violation of law, including,

in so far as their country is concerned, the laws and customs of war, but they held that heads of states are, as agents of the people, in whom the sovereignty of any state resides, responsible to the people for the illegal acts which they may have committed, and that they are not and that they should not be made responsible to any other sovereignty.

The American representatives assumed, in debating this question, that from a legal point of view the people of every independent country are possessed of sovereignty, and that that sovereignty is not held in that sense by rulers; that the sovereignty which is thus possessed can summon before it any person, no matter how high his estate, and call upon him to render an account of his official stewardship; that the essence of sovereignty consists in the fact that it is not responsible to any foreign sovereignty; that in the exercise of sovereign powers which have been conferred upon him by the people, a monarch or head of state acts as their agent; that he is only responsible to them; and that he is responsible to no other people or group of people in the world.

The American representatives admitted that from the moral point of view the head of a state, be he termed emperor, king, or chief executive, is responsible to mankind, but that from the legal point of view they expressed themselves as unable to see how any member of the Commission could claim that the head of a state exercising sovereign rights is responsible to any but those who have confided those rights to him by consent expressed or implied.

The majority of the Commission, however, was not influenced by the legal argument. They appeared to be fixed in their determination to try and punish by judicial process the "ex-Kaiser" of Germany. That there might be no doubt about their meaning, they insisted that the jurisdiction of the high tribunal whose constitution they recommended should include the heads of states, and they therefore inserted a provision to this effect in express words in the clause dealing with the jurisdiction of the tribunal.

In view of their objections to the uncertain law to be applied, varying according to the conception of the members of the high court as to the laws and principles of humanity, and in view also of their

objections to the extent of the proposed jurisdiction of that tribunal, the American representatives were constrained to decline to be a party to its creation. Necessarily they declined the proffer on behalf of the Commission that the United States should take part in the proceedings before that tribunal, or to have the United States represented in the prosecuting commission charged with the "duty of selecting the cases for trial before the tribunal and of directing and conducting prosecutions before it." They therefore refrained from taking further part either in the discussion of the constitution or of the procedure of the tribunal.

It was an ungracious task for the American representatives to oppose the views of their colleagues in the matter of the trial and punishment of heads of states, when they believed as sincerely and as profoundly as any other member that the particular heads of states in question were morally guilty, even if they were not punishable before an international tribunal, such as the one proposed, for the acts which they themselves had committed or with whose commission by others they could be justly taxed. It was a matter of great regret to the American representatives that they found themselves subjected to criticism, owing to their objection to declaring the laws and principles of humanity as a standard whereby the acts of their enemies should be measured and punished by a judicial tribunal. Their abhorrence for the acts of the heads of states of enemy countries is no less genuine and deep than that of their colleagues, and their conception of the laws and principles of humanity is, they believe, not less enlightened than that of their colleagues. They considered that they were dealing solely with violations of the laws and customs of war, and that they were engaged under the mandate of the Conference in creating a tribunal in which violations of the laws and customs of war should be tried and punished. They therefore confined themselves to law in its legal sense, believing that in so doing they accorded with the mandate of submission, and that to have permitted sentiment or popular indignation to affect their judgment would have been violative of their duty as members of the Commission on Responsibilities.

They submit their views, rejected by the Commission, to the

Conference, in full confidence that it is only through the administration of law, enacted and known before it is violated, that justice may ultimately prevail internationally, as it actually does between individuals in all civilized nations.

Memorandum on the Principles which should Determine Inhuman and Improper Acts of War

To determine the principles which should be the standard of justice in measuring the charge of inhuman or atrocious conduct during the prosecution of a war, the following propositions should be considered:

1. Slaying and maiming men in accordance with generally accepted rules of war are from their nature cruel and contrary to the modern conception of humanity.

2. The methods of destruction of life and property in conformity with the accepted rules of war are admitted by civilized nations to be justifiable and no charge of cruelty, inhumanity, or impropriety lies against a party employing such methods.

3. The principle underlying the accepted rules of war is the necessity of exercising physical force to protect national safety or to maintain national rights.

4. Reprehensible cruelty is a matter of degree which cannot be justly determined by a fixed line of distinction, but one which fluctuates in accordance with the facts in each case, but the manifest departure from accepted rules and customs of war imposes upon the one so departing the burden of justifying his conduct, as he is *prima facie* guilty of a criminal act.

5. The test of guilt in the perpetration of an act, which would be inhuman or otherwise reprehensible under normal conditions, is the necessity of that act to the protection of national safety or national rights measured chiefly by actual military advantage.

6. The assertion by the perpetrator of an act that it is necessary for military reasons does not exonerate him from guilt if the facts and circumstances present reasonably strong grounds for establishing the needlessness of the act or for believing that the assertion is not made in good faith.

7. While an act may be essentially reprehensible and the perpetrator entirely unwarranted in assuming it to be necessary from a military point of view, he must not be condemned as wilfully violating the laws and customs of war or the principles of humanity unless it can be shown that the act was wanton and without reasonable excuse.

8. A wanton act which causes needless suffering (and this includes such causes of suffering as destruction of property, deprivation of necessities of life, enforced labor, &c.) is cruel and criminal. The full measure of guilt attaches to a party who without adequate reason perpetrates a needless act of cruelty. Such an act is a crime against civilization, which is without palliation.

9. It would appear, therefore, in determining the criminality of an act, that there should be considered the wantonness or malice of the perpetrator, the needlessness of the act from a military point of view, the perpetration of a justifiable act in a needlessly harsh or cruel manner, and the improper motive which inspired it.

ROBERT LANSING.

JAMES BROWN SCOTT.

ANNEX III

RESERVATIONS BY THE JAPANESE DELEGATION

April 4, 1919

The Japanese Delegates on the Commission on Responsibilities are convinced that many crimes have been committed by the enemy in the course of the present war in violation of the fundamental principles of international law, and recognize that the principal responsibility rests upon individual enemies in high places. They are consequently of opinion that, in order to re-establish for the future the force of the principles thus infringed, it is important to discover practical means for the punishment of the persons responsible for such violations.

A question may be raised whether it can be admitted as a principle of the law of nations that a high tribunal constituted by belligerents

can, after a war is over, try an individual belonging to the opposite side, who may be presumed to be guilty of a crime against the laws and customs of war. It may further be asked whether international law recognizes a penal law as applicable to those who are guilty.

In any event, it seems to us important to consider the consequences which would be created in the history of international law by the prosecution for breaches of the laws and customs of war of enemy heads of states before a tribunal constituted by the opposite party.

Our scruples become still greater when it is a question of indicting before a tribunal thus constituted highly placed enemies on the sole ground that they abstained from preventing, putting an end to, or repressing acts in violation of the laws and customs of war, as is provided in clause (c) of section (b) of Chapter IV.

It is to be observed that to satisfy public opinion of the justice of the decision of the appropriate tribunal, it would be better to rely upon a strict interpretation of the principles of penal liability, and consequently not to make cases of abstention the basis of such responsibility.

In these circumstances the Japanese Delegates thought it possible to adhere, in the course of the discussions in the Commission, to a text which would eliminate from clause (c) of section (b) of Chapter IV both the words "including the heads of states," and the provision covering cases of abstention, but they feel some hesitation in supporting the amended form which admits a criminal liability where the accused, with knowledge and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to, or repressing acts in violation of the laws and customs of war.

The Japanese Delegates desire to make clear that, subject to the above reservations, they are disposed to consider with the greatest care every suggestion calculated to bring about unanimity in the Commission.

M. ADATCI.

S. TACHI.

ANNEX IV

PROVISIONS FOR INSERTION IN TREATIES WITH ENEMY GOVERNMENTS

ARTICLE I

The *Enemy* Government admits that even after the conclusion of peace, every Allied and Associated State may exercise, in respect of any enemy or former enemy, the right which it would have had during the war to try and punish any enemy who fell within its power and who had been guilty of a violation of the principles of the law of nations as these result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience.

ARTICLE II

The *Enemy* Government recognizes the right of the Allied and Associated States, after the conclusion of peace, to constitute a High Tribunal composed of members named by the Allied and Associated States in such numbers and in such proportions as they may think proper, and admits the jurisdiction of such tribunal to try and punish enemies or former enemies guilty during the war of violations of the principles of the law of nations as these result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience. It agrees that no trial or sentence by any of its own courts shall bar trial and sentence by the High Tribunal or by a national court belonging to one of the Allied or Associated States.

ARTICLE III

The *Enemy* Government recognizes the right of the High Tribunal to impose upon any person found guilty the punishment or punishments which may be imposed for such an offence or offences by any court in any country represented on the High Tribunal or in the country of the convicted person. The *Enemy* Government will not object to such punishment or punishments being carried out.

ARTICLE IV

The *Enemy* Government agrees, on the demand of any of the Allied or Associated States, to take all possible measures for the purpose of the delivery to the designated authority, for trial by the High Tribunal or, at its instance, by a national court of one of such Allied or Associated States, of any person alleged to be guilty of an offence against the laws and customs of war or the laws of humanity who may be in its territory or otherwise under its direction or control. No such person shall in any event be included in any amnesty or pardon.

ARTICLE V

The *Enemy* Government agrees, on the demand of any of the Allied or Associated States, to furnish to it the name of any person at any time in its service who may be described by reference to his duties or station during the war or by reference to any other description which may make his identification possible and further agrees to furnish such other information as may appear likely to be useful for the purpose of designating the persons who may be tried before the High Tribunal or before one of the national courts of an Allied or Associated State for a crime against the laws and customs of war or the laws of humanity.

ARTICLE VI

The *Enemy* Government agrees to furnish, upon the demand of any Allied or Associated State, all General Staff plans of campaign, orders, instructions, reports, logs, charts, correspondence, proceedings of courts, tribunals or investigating bodies, or such other documents or classes of documents as any Allied or Associated State may request as being likely to be useful for the purpose of identifying or as evidence for or against any person, and upon demand as aforesaid to furnish copies of any such documents.

THE TREATY OF PEACE WITH GERMANY IN THE UNITED STATES SENATE

By GEORGE A. FINCH

*Secretary of the Board of Editors of the JOURNAL; Member of the
Bar of the District of Columbia*

FOR the second time the United States Senate, on March 19, 1920, refused its advice and consent to the ratification of the Treaty of Peace with Germany, signed at Versailles on June 28, 1919. The first rejection took place exactly four months before, namely, on November 19, 1919. The vote on the treaty in November was 39 for and 55 against, and in March 49 for and 35 against. Both votes were upon resolutions of ratification containing reservations and understandings the acceptance of which by the Allied and Associated Powers was made a condition precedent to the going into effect of the ratification of the United States. A resolution of ratification without reservations or conditions of any kind was presented to the Senate on November 19, 1919, and defeated by a vote of 38 for to 53 against. No resolution of this kind was offered or voted upon in March. The treaty has thus failed to receive in either form the concurrence of two-thirds of the Senators present as required by the Constitution for the making of treaties by the President.

These votes do not in themselves, however, give an accurate index to the real attitude of the Senate toward the treaty if full weight be given to the positions assumed by Senators in debate and by their votes in the preliminary stages of the contest for ratification. To understand the parliamentary dilemma into which the treaty has been forced, it is necessary to refer briefly to certain facts in its short but turbulent career affecting ratification and to summarize the efforts of its advocates to obtain the constitutional advice and consent of the Senate.

THE SITUATION PRIOR TO THE SUBMISSION OF THE TREATY TO THE
SENATE

The first part of the treaty text to be made public was the Covenant of the League of Nations approved by the Peace Conference on February 14, 1919, which, under the resolution adopted by the conference on January 25, 1919, "should be treated as an integral part of the general treaty of peace." Opposition to the Covenant was expressed in the Senate soon after the text became known in the United States and, when the President returned from Paris to Washington in February, 1919, he invited the members of the Senate Committee on Foreign Relations and of the House Committee on Foreign Affairs to the White House for the purpose of discussing the terms of the Covenant. This took place at a dinner on February 26, 1919.

According to one of the Senators present on that occasion, attention was directed to "what were considered to be vital defects and infringements of our Constitution and form of government. Great changes of our traditional policies were pointed out and discussed, and the President was informed that those changes would be absolutely necessary, and that the Covenant in the form in which it then stood was absolutely unsatisfactory to the Committee on Foreign Relations of the Senate."¹ The objections thus pointed out informally to the President were given more definite form on March 4, 1919, the last day of the Sixty-Fifth Congress, when the following resolution, the consideration of which was prevented by lack of unanimous consent, was inserted in the record bearing the signatures of thirty-seven Senators:

Whereas under the Constitution it is a function of the Senate to advise and consent to or dissent from the ratification of any treaty of the United States, and no such treaty can become operative without the consent of the Senate expressed by the affirmative vote of two-thirds of the Senators present; and

Whereas, owing to the victory of the arms of the United States and of the nations with whom it is associated, a peace conference was convened and is now in session at Paris for the purpose of settling the terms of peace; and

¹ Statement of Senator Brandegee, Congressional Record, Nov. 19, 1919, p. 8774.

Whereas, a committee of the conference has proposed a constitution for a league of nations and the proposal is now before the peace conference for its consideration: Now, therefore, be it

Resolved by the Senate of the United States in the discharge of its constitutional duty of advice in regard to treaties, That it is the sense of the Senate that, while it is their sincere desire that the nations of the world should unite to promote peace and general disarmament, the constitution of the league of nations in the form now proposed to the peace conference should not be accepted by the United States; and be it

Resolved, further, That it is the sense of the Senate that the negotiations on the part of the United States should immediately be directed to the utmost expedition of the urgent business of negotiating peace terms with Germany satisfactory to the United States and the nations with whom the United States is associated in the war against the German Government, and that the proposal for a league of nations to insure the permanent peace of the world should be then taken up for careful and serious consideration.²

With reference to the objections to the contents of the Covenant raised by members of the Senate Committee the President has since said:

"I brought the first draft of the covenant of the league of nations over to this country in March last. I then held a conference of the frankest sort with the Foreign Relations Committee of the Senate. They made a number of suggestions as to alterations and additions. I then took all of those suggestions back to Paris, and every one of them, without exception, was embodied in the covenant."³

The President's reply to the request of the thirty-seven Senators for the separation of the Covenant from the treaty was given in his speech at the Metropolitan Opera House in New York City on March 4, 1919, in which, after vigorously defending the Covenant, he said:

When that treaty comes back gentlemen on this side will find the covenant not only in it, but so many threads of the treaty tied to the covenant that you cannot dissect the covenant from the treaty without destroying the whole vital structure.

² Congressional Record, March 4, 1919, p. 4974.

³ Address of the President at Tacoma, Washington, Sept. 13, 1919, Senate Document No. 120, 66th Cong., 1st sess., p. 182.

The original draft of the covenant and the covenant as finally adopted are printed in the Supplement to this JOURNAL for April, 1919, pp. 113 and 128. The alterations made in the original draft are described by President Wilson in his address at the plenary session of the Peace Conference at Paris, April 28, 1919, reporting the final draft for adoption. His address is printed in the Supplement, *ibid.*, p. 124.

President Wilson evidently did not at that time doubt his ability to secure the approval of the treaty by the United States, including the Covenant of the League of Nations. His course was warmly defended by Senators of his own party. Some peace societies, notably the League to Enforce Peace, undertook a nation-wide propaganda to develop public sentiment for the league, and the President no doubt felt justified in relying upon the traditionally favorable disposition of the American people and government toward the substitution of peaceful methods for war in the settlement of international disputes. He publicly expressed his confidence in the popular support of his program at home in his speech at New York above referred to, made on the eve of his return to Paris. In opening that address he said:

The first thing I am going to tell the people on the other side of the water is that an overwhelming majority of the American people is in favor of the League of Nations. I know that this is true. I have had unmistakable intimations of it from all parts of the country, and the voice rings true in every case.

This feeling of confidence in the ultimate success of the President's policy was reflected among his advisers and assistants on the American Peace Commission, to which the writer was attached as an assistant technical adviser. The opinion was freely expressed among them that when President Wilson brought back the treaty and the Covenant he would be so overwhelmingly supported by the American people as to make his demand for ratification irresistible.

THE TREATY IN THE COMMITTEE ON FOREIGN RELATIONS

Such was the situation when President Wilson on July 10, 1919, personally submitted the peace treaty with Germany to the Senate with an earnest appeal for its prompt ratification.⁴ Under the rules of the Senate, the treaty was referred to the Committee on Foreign Relations. The Committee decided to hold public hearings, which began on July 31, and ended on September 12. During its consideration of the treaty the Committee met on 37 days, sitting sometimes in

⁴ The President's address on submitting the treaty to the Senate is printed in this JOURNAL for July, 1919, pp. 554 and 576.

the morning and afternoon. In the course of the hearings the Committee had before it Honorable Robert Lansing, Secretary of State and one of the American Peace Commissioners, and several of the technical advisers to the American Peace Commission, including Mr. B. M. Baruch, economic adviser, Mr. Norman H. Davis, financial adviser, and Mr. David Hunter Miller, legal adviser. In addition to these officials who took part in the formulation and drafting of the treaty, the Committee heard a number of private persons interested in particular sections of the treaty, especially those relating to geographical distribution of territories and the self-determination of peoples. The presentation of such subjects was made by American citizens as, under the rules of the Committee, only American citizens could be heard by it.

The proposed transfer of Shantung to Japan was opposed by Mr. Thomas F. F. Millard, who styled himself the unofficial friendly counsellor of China, and Mr. John C. Ferguson, official adviser to the President of China. A statement on this subject was also made by Professor E. T. Williams, technical adviser on Far Eastern affairs to the American Peace Commission.

Objections to the provisions of the treaty in regard to Egypt were presented by Mr. Joseph W. Folk, counsel for the commission appointed by the Legislative Assembly of Egypt to attend the Peace Conference at Paris. The Egyptians desired either a recognition of their independence or that their status be left to the Council of the League of Nations.

The recognition of the independence of Lithuania, Latvia, Esthonia and the Ukraine was requested by representatives of the American Mid-European Association, the League of Esthonians, Letts, Lithuanians and Ukrainians of America, and the Ukrainian Federation of the United States.

Mr. Dudley Field Malone, who stated that he appeared as the chosen representative to speak for the people of India, requested that the Covenant be so amended as to require every signatory to provide all its people with democratic institutions, and he presented a resolution passed by the Indian National Council in December, 1918, claiming the right of self-determination.

A large delegation of Americans of Irish descent appeared in opposition to the approval of the Covenant on the ground that, if adopted, it would make more difficult the realization of the aspirations of Ireland for independence. The delegation was headed by the Honorable Daniel F. Cohalan, Justice of the Supreme Court of New York, and included the Honorable Frank P. Walsh, chairman on the American Commission for Irish Independence, former chairman of the War Labor Board; Honorable Edward F. Dunne, former Governor of Illinois and former Mayor of Chicago; Honorable W. W. McDowell, Lieutenant-Governor of Montana, and the Honorable W. Bourke Cochran, former member of Congress.

The claims of Greece to Thrace were submitted by representatives of the National Congress of the Friends of Greece, while representatives of the Hungarian-American Federation protested against the dismemberment of Hungary and requested that plebiscites be held in Hungarian territory which it is proposed to transfer to other sovereignties. The claims of Hungary so far as they overlapped those of Czecho-Slovakia were opposed by representatives of the Slovak League and the Bohemian National Alliance of America.

Representatives of the Albanian National Party requested the right of self-determination for Albania and a government by an international commission appointed by the League of Nations.

The claims of the Jugo-Slavs in the Adriatic and Fiume were explained by a delegation representing the Jugo-Slav Republican Alliance of the United States, while Italy's side was set forth by Honorable F. H. La Guardia, member of Congress, and representatives of the Italian Irredentist Associations of America.

The complete verbatim report of all of these hearings is printed in an official document of 1,297 pages⁵ and contains, in addition to the oral testimony, numerous written communications sent to the Committee by interested parties, and the texts of some important official documents of the Peace Conference at Paris.

The most important part of the hearings was a conference with the President at the White House, which took place on August 19, 1919. It would be impossible within a short space to give an adequate

⁵ Senate Document, No. 106, 66th Cong., 1st sess.

summary of the conversation between the President and the sixteen Senators who participated. The President's views were presented in writing at the opening of the conference, of which the following extract contains the material part:

Nothing, I am led to believe, stands in the way of the ratification of the treaty except certain doubts with regard to the meaning and implication of certain articles of the covenant of the league of nations; and I must frankly say that I am unable to understand why such doubts should be entertained. You will recall that when I had the pleasure of a conference with your committee and with the Committee of the House of Representatives on Foreign Affairs at the White House in March last the questions now most frequently asked about the league of nations were all canvassed with a view to their immediate clarification. The covenant of the league was then in its first draft and subject to revision. It was pointed out that no express recognition was given to the Monroe Doctrine; that it was not expressly provided that the league should have no authority to act or to express a judgment on matters of domestic policy; that the right to withdraw from the league was not expressly recognized; and that the constitutional right of the Congress to determine all questions of peace and war was not sufficiently safeguarded. On my return to Paris all these matters were taken up again by the commission on the league of nations and every suggestion of the United States was accepted.

The views of the United States with regard to the questions I have mentioned had, in fact, already been accepted by the commission and there was supposed to be nothing inconsistent with them in the draft of the covenant first adopted—the draft which was the subject of our discussion in March—but no objection was made to saying explicitly in the text what all had supposed to be implicit in it. There was absolutely no doubt as to the meaning of any one of the resulting provisions of the covenant in the minds of those who participated in drafting them, and I respectfully submit that there is nothing vague or doubtful in their wording.

The Monroe Doctrine is expressly mentioned as an understanding which is in no way to be impaired or interfered with by anything contained in the covenant and the expression “regional understandings like the Monroe Doctrine” was used, not because any one of the conferees thought there was any comparable agreement anywhere else in existence or in contemplation, but only because it was thought best to avoid the appearance of dealing in such a document with the policy of a single nation. Absolutely nothing is concealed in the phrase.

With regard to domestic questions Article XVI of the covenant expressly provides that, if in case of any dispute arising between members of the league the matter involved is claimed by one of the parties “and is found by the council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the council shall so report, and shall make no recommendation as to its settlement.” The United States was by no means the only Government interested in the explicit adoption of this provision, and there is no doubt in the mind of any authoritative student of international law that such

matters as immigration, tariffs, and naturalization are incontestably domestic questions with which no international body could deal without express authority to do so. No enumeration of domestic questions was undertaken, because to undertake it, even by sample, would have involved the danger of seeming to exclude those not mentioned.

The right of any sovereign State to withdraw had been taken for granted, but no objection was made to making it explicit. Indeed, so soon as the views expressed at the White House conference were laid before the commission it was at once conceded that it was best not to leave the answer to so important a question to inference. No proposal was made to set up any tribunal to pass judgment upon the question whether a withdrawing nation had in fact fulfilled "all its international obligations and all its obligations under the covenant." It was recognized that that question must be left to be resolved by the conscience of the nation proposing to withdraw; and I must say that it did not seem to me worth while to propose that the article be made more explicit, because I knew that the United States would never itself propose to withdraw from the league if its conscience was not entirely clear as to the fulfillment of all its international obligations. It has never failed to fulfill them and never will.

Article 10 is in no respect of doubtful meaning when read in the light of the covenant as a whole. The council of the league can only "advise upon" the means by which the obligations of that great article are to be given effect to. Unless the United States is a party to the policy or action in question, her own affirmative vote in the council is necessary before any advice can be given, for a unanimous vote of the council is required. If she is a party, the trouble is hers anyhow. And the unanimous vote of the council is only advice in any case. Each Government is free to reject it if it pleases. Nothing could have been made more clear to the conference than the right of our Congress under our Constitution to exercise its independent judgment in all matters of peace and war. No attempt was made to question or limit that right. The United States will, indeed, undertake under article 10 to "respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league," and that engagement constitutes a very grave and solemn moral obligation. But it is a moral, not a legal, obligation, and leaves our Congress absolutely free to put its own interpretation upon it in all cases that call for action. It is binding in conscience only, not in law.

Article 10 seems to me to constitute the very backbone of the whole covenant. Without it the league would be hardly more than an influential debating society.

It has several times been suggested, in public debate and in private conference, that interpretations of the sense in which the United States accepts the engagements of the covenant should be embodied in the instrument of ratification. There can be no reasonable objection to such interpretations accompanying the act of ratification provided they do not form a part of the formal ratification itself. Most of the interpretations which have been suggested to me embody what seems to me the plain meaning of the instrument itself. But if such interpretations should constitute a part of the formal resolution of ratification, long delays would be the inevitable consequence, inasmuch as all the many governments

concerned would have to accept, in effect, the language of the Senate as the language of the treaty before ratification would be complete. The assent of the German Assembly at Weimar would have to be obtained, among the rest, and I must frankly say that I could only with the greatest reluctance approach that assembly for permission to read the treaty as we understand it and as those who framed it quite certainly understood it. If the United States were to qualify the document in any way, moreover, I am confident from what I know of the many conferences and debates which accompanied the formulation of the treaty that our example would immediately be followed in many quarters, in some instances with very serious reservations, and that the meaning and operative force of the treaty would presently be clouded from one end of its clauses to the other.⁶

The only other outstanding feature of the hearings which space will permit us to notice, was the testimony of William C. Bullitt, regarding the alleged views of Secretary Lansing on the treaty. Mr. Bullitt was an employe of the State Department, attached to the Peace Conference, who resigned in May, 1919, after he had learned the terms of the proposed treaty of peace with Germany. At the end of his testimony before the Committee on Foreign Relations on September 12, 1919, Mr. Bullitt read from a memorandum of a conversation with the Secretary of State at Paris on May 19, 1919, as follows:

Mr. Lansing then said that he, too, considered many parts of the treaty thoroughly bad, particularly those dealing with Shantung and the league of nations. He said: "I consider that the league of nations at present is entirely useless. The great powers have simply gone ahead and arranged the world to suit themselves. England and France particularly have gotten out of the treaty everything that they wanted, and the league of nations can do nothing to alter any of the unjust clauses of the treaty except by unanimous consent of the members of the league, and the great powers will never give their consent to changes in the interests of weaker peoples."

We then talked about the possibility of ratification by the Senate. Mr. Lansing said: "I believe that if the Senate could only understand what this treaty means, and if the American people could really understand, it would unquestionably be defeated."⁷

⁶ Sen. Doc. 106, 66 Cong., 1st sess., p. 500.

⁷ *Ibid.*, p. 1276.

PRESIDENT WILSON'S ENDEAVORS TO OBTAIN UNCONDITIONAL
RATIFICATION

Debate in the Senate continued while the treaty was under consideration by the Committee on Foreign Relations. It increased in volume and diversity until the Senators became divided into three groups. A small number of Senators absolutely opposed the ratification of the treaty in any form, and because of their insistent opposition they became known as the "irreconcilables." A larger group supported the President's demand that the treaty be ratified as signed, but later indicated their willingness to accept reservations of an "interpretative character." The third group was made up of Senators who favored the ratification of the treaty on condition that it contain reservations safeguarding what they believed to be the substantial rights and interests of the United States. This group itself did not remain compact, but developed a schism of so-called "mild reservationists" who favored a larger participation of the United States in world affairs and therefore a minimum of reservations, as against the more restricted participation and maximum program of reservations advocated by the main group of reservationists.

As the debate progressed in the Senate and individual Senators expressed their views, it became apparent that the treaty could not obtain the necessary votes for ratification even with "interpretative reservations." President Wilson endeavored to save the situation by personal conferences at the White House with mild reservation Senators; but the serious probability that the Senate would not fully approve his work at Paris forced him to play what he evidently relied upon as his strongest hand, namely, a direct appeal to the people to support the treaty and to bring sufficient pressure to bear upon the opposing Senators to obtain its ratification in form acceptable to him. Accordingly the President undertook to accomplish this purpose in a speech-making tour of the West. He began at Columbus, Ohio, on September 4, 1919, visiting in rapid succession Indianapolis, St. Louis, Kansas City, Des Moines, Omaha, Sioux Falls, St. Paul, Min-

neapolis, Bismarck and Mandan, N. D., Billings and Helena, Montana; Cœur d'Alene, Idaho; Spokane, Tacoma, Portland, San Francisco, Oakland, San Diego, Los Angeles, Sacramento, Reno, Ogden, Salt Lake City, Cheyenne; Denver and Pueblo, Colorado. In his speeches he expounded what he considered to be the real meaning of the Covenant, dwelt upon features of the treaty whose merits he said had been overlooked by its opponents and lukewarm friends and deplored the attempts to amend or accept it with reservations. At the last-named city the trip was brought to an abrupt end on September 25th by the serious breakdown of the President, which forced him immediately to return to Washington, where he was confined to the White House for five months and obliged to relinquish his active leadership in behalf of the treaty of peace and the League of Nations. His physical exertions on this strenuous 9,500 mile trip to bring about their ratification, in the course of which he made thirty-seven addresses of an average length of 5,000 words each in twenty-nine cities on eighteen days, exclusive of Sundays, spending his nights and the intervals between speeches in his Pullman car, came near resulting unfortunately in the tragic fulfilment of the declaration made in the course of his address at Spokane, Washington, on September 12, 1919, that "I am ready to fight from now until all the fight has been taken out of me by death to redeem the faith and proposed by the Committee were thus explained in its report:

THE TREATY REPORTED TO THE SENATE

In the meantime the Committee on Foreign Relations had concluded its consideration of the treaty, and on September 10, 1919, reported it to the Senate with recommendations of a number of amendments and reservations. The amendments and reservations proposed by the Committee were thus explained in its report:

AMENDMENTS

The first amendment offered by the committee relates to the league. It is proposed so to amend the text as to secure for the United States a vote in the assembly of the league equal to that of any other power. Great Britain now has under the name of the British Empire one vote in the council of the league. She

^a Sen. Doc. 120, 66th Cong., 1st sess., p. 173.

has four additional votes in the assembly of the league for her self-governing dominions and colonies, which are most properly members of the league and signatories to the treaty. She also has the vote of India, which is neither a self-governing dominion nor a colony, but merely a part of the Empire and which apparently was simply put in as a signatory and member of the league by the peace conference because Great Britain desired it. Great Britain also will control the votes of the Kingdom of Hejaz and of Persia. With these last two of course we have nothing to do. But if Great Britain has six votes in the league assembly no reason has occurred to the committee and no argument had been made to show why the United States should not have an equal number. If other countries like the present arrangement, that is not our affair; but the committee failed to see why the United States should have but one vote in the assembly of the league when the British Empire has six.

Amendments 39 to 44, inclusive, transfer to China the German lease and rights, if they exist, in the Chinese Province of Shantung, which are given by the treaty to Japan. The majority of the committee were not willing to have their votes recorded at any stage in the proceedings in favor of the consummation of what they consider a great wrong. They cannot assent to taking the property of a faithful ally and handing it over to another ally in fulfillment of a bargain made by other powers in a secret treaty. It is a record which they are not willing to present to their fellow-citizens or leave behind them for the contemplation of their children.

Amendment No. 2 is simply to provide that where a member of the league has self-governing dominions and colonies which are also members of the league, the exclusion of the disputants under the league rules shall cover the aggregate vote of the member of the league and its self-governing dominions and parts of empire combined if any one of them is involved in the controversy.

The remaining amendments, with a single exception, may be treated as one, for the purpose of all alike is to relieve the United States from having representatives on the commissions established by the league which deal with questions in which the United States has and can have no interest and in which the United States has evidently been inserted by design. The exception is amendment No. 45, which provides that the United States shall have a member of the reparation commission, but that such commissioner of the United States cannot, except in the case of shipping where the interests of the United States are directly involved, deal with or vote upon any other questions before that commission except under instructions from the Government of the United States.

RESERVATIONS

The committee proposes four reservations to be made a part of the resolution of ratification when it is offered. The committee reserves, of course, the right to offer other reservations if they shall so determine. The four reservations now presented are as follows:

"1. The United States reserves to itself the unconditional right to withdraw from the league of nations upon the notice provided in article 1 of said treaty of peace with Germany."

The provision in the league covenant for withdrawal declares that any member may withdraw provided it has fulfilled all its international obligations and all its obligations under the covenant. There has been much dispute as to who would decide if the question of the fulfillment of obligations was raised and it is very generally thought that this question would be settled by the council of the league of nations. The best that can be said about it is that the question of decision is clouded with doubt. On such a point as this there must be no doubt. The United States, which has never broken an international obligation, cannot permit all its existing treaties to be reviewed and its conduct and honor questioned by other nations. The same may be said in regard to the fulfillment of the obligations to the league. It must be made perfectly clear that the United States alone is to determine as to the fulfillment of its obligations, and its right of withdrawal must therefore be unconditional as provided in the reservation.

"2. The United States declines to assume, under the provisions of article 10, or under any other article, any obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between other nations, members of the league or not, or to employ the military or naval forces of the United States in such controversies, or to adopt economic measures, for the protection of any other country, whether a member of the league or not, against external aggression or for the purpose of coercing any other country, or for the purpose of intervention in the internal conflicts or other controversies which may arise in any other country, and no mandate shall be accepted by the United States under article 22, Part I, of the treaty of peace with Germany, except by action of the Congress of the United States."

This reservation is intended to meet the most vital objection to the league covenant as it stands. Under no circumstances must there be any legal or moral obligation upon the United States to enter into war or to send its Army and Navy abroad or without the unfettered action of Congress to impose economic boycotts on other countries. Under the Constitution of the United States the Congress alone has the power to declare war, and all bills to raise revenue or affecting the revenue in any way must originate in the House of Representatives, be passed by the Senate, and receive the signature of the President. These Constitutional rights of Congress must not be impaired by any agreements such as are presented in this treaty, nor can any opportunity of charging the United States with bad faith be permitted. No American soldiers or sailors must be sent to fight in other lands at the bidding of the league of nations. American lives must not be sacrificed except by the will and command of the American people acting through their constitutional representatives in Congress.

This reservation also covers the subject of mandates. According to the provisions of the covenant of the league the acceptance of a mandate by any member is voluntary, but as to who shall have authority to refuse or to accept a mandate for any country the covenant of the league is silent. The decision as to accepting a mandate must rest exclusively within the control of the Congress of the United States as the reservation provides and must not be delegated, even by inference, to any personal agent or to any delegate or commissioner.

"3. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction, and declares that all domestic and political questions relating to its affairs, including immigration, coastwise traffic, the tariff, commerce, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty submitted in any way either to arbitration or to the consideration of the council or of the assembly of the league of nations, or to the decision or recommendation of any other power."

This reservation speaks for itself. It is not necessary to follow out here all tortuous windings, which to those who have followed them through the labyrinth disclose the fact that the league under certain conditions will have power to pass upon and decide questions of immigration and tariff, as well as the others mentioned in the reservation. It is believed by the committee that this reservation relieves the United States from any dangers or any obligations in this direction.

The fourth and last reservation is as follows:

"4. The United States declines to submit for arbitration or inquiry by the assembly or the council of the league of nations provided for in said treaty of peace any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe doctrine; said doctrine is to be interpreted by the United States alone, and is hereby declared to be wholly outside the jurisdiction of said league of nations and entirely unaffected by any provision contained in the said treaty of peace with Germany."

The purpose of this reservation is clear. It is intended to preserve the Monroe doctrine from any interference or interpretation by foreign powers. As the Monroe doctrine has protected the United States, so, it is believed by the committee, will this reservation protect the Monroe doctrine from the destruction with which it is threatened by article 21 in the covenant of the league and leave it, where it has always been, within the sole and complete control of the United States.

This covenant of the league of nations is an alliance and not a league, as is amply shown by the provisions of the treaty with Germany which vests all essential power in five great nations. Those same nations, the principal allied and associated powers, also dominate the league through the council.

The committee believe that the league as it stands will breed wars instead of securing peace. They also believe that the covenant of the league demands sacrifices of American independence and sovereignty which would in no way promote the world's peace but which are fraught with the gravest dangers to the future safety and well-being of the United States. The amendments and reservations alike are governed by a single purpose and that is to guard American rights and American sovereignty, the invasion of which would stimulate breaches of faith, encourage conflicts, and generate wars. The United States can serve the cause of peace best, as she has served it in the past, and do more to secure liberty and civilization throughout the world by proceeding along the paths she has always followed and by not permitting herself to be fettered by the dictates

of other nations or immersed and entangled in all the broils and conflicts of Europe.⁹

The foregoing report was signed by the majority of the members of the Committee. A separate report was made on September 11, by the minority members of the Committee, who opposed both amendments and reservations. The proposed amendments would, if adopted, in their opinion defeat the participation of the United States in the treaty, and the same effect would be produced, it was stated, by the adoption of the reservations, which were in no sense "interpretative reservations" but in fact alterations of the treaty. Concerning the League of Nations the minority report added:

The league of nations proposes to organize the nations of the world for peace, whereas they have always heretofore been organized for war. It proposes to establish the rule of international justice in place of force. It proposes to make a war of conquest impossible by uniting all nations against the offender.

It is the first international arrangement ever made by which small and weak nations are given the organized strength of the world for protection.

It is a covenant between many nations by which each agrees not to do certain things which in the past have produced wars and to do many things which have been found to preserve the peace.

It is a working plan for the gradual reduction of armament by all members simultaneously in proper proportion and by agreement.

It sets up arbitration as a friendly method of adjusting disputes and inquiry when arbitration is not agreed to. In both cases it provides a cooling-off period of nine months during which the differences may be adjusted.

It preserves the territorial integrity and political independence of each member and leaves to each the exercise of its sovereign rights as a nation.

It will save the world from wars and preparations for wars. It will reduce armies and navies and taxes.

It will help to remove the discontent with government in all countries by making government beneficent and devoting its revenues to constructive rather than to destructive purposes.

It is the only plan proposed to redeem the world from war, pestilence and famine. The only one by which a stricken world can be redeemed from the disasters of the late war and the dangers of impending international chaos.¹⁰

A third report on the treaty, made by Senator McCumber on September 15, represented substantially the views of the "mild reservationists." It opposed the amendments and objected to the

⁹ Senate Report, No. 176, 66th Cong., 1st sess. Part 1.

¹⁰ *Ibid.*, Part 2.

phraseology of the reservations which it characterized as unnecessarily severe. It recommended four substitute reservations in lieu of the reservations proposed by the majority, and added two additional reservations to take the place of the amendments proposed by the majority on the subject of Shantung and the voting power of self-governing dominions in the league. Concerning the other amendments Senator McCumber expressed his opinion that the United States should not withdraw from the work of reconstruction in Europe. He thus commented upon the Covenant of the League of Nations:

There has been written into this compact a great underlying principle which is the very soul of the agreement, that the same code of morality which governs people in their relations to each other in every highly organized State of the world shall govern nations in their relations to each other; that no nation shall rob another nation of its territory or its independence; that no nation shall have the right to murder the people of another nation for the selfish purpose of extending its own domains.

No statesman, no philosopher, has ever yet given a single reason why nations, which are but collections of individuals, should not be governed in their international relations by the same code of ethics that governs the peoples of communities or States in their internal relations.

For the first time in the history of the world this great advance step is attempted. The whole issue is whether nations can so eliminate their selfish desires, so restrain their national avarice, as to accord equal justice to all people. As in the community, every individual assumes to assist in the enforcement of law, in the protection of the life, liberty, and property of every other citizen, so in this international code of ethics, each nation assumes to do its part in guarding the international rights of every other nation. As in every State a forum has been provided for the settlement of individual disputes, and no individual is allowed the right to disregard the law of his community, so in this international compact, a forum is provided for the settlement of international disputes, and each nation is forbidden to determine when it may commit an act of aggression against another nation until it has at least brought its case into this forum for consideration and settlement if possible.¹¹

THE TREATY IN THE SENATE

The treaty of peace became the regular business before the Senate on September 15. On the following day its consideration was begun section by section. By September 27, the first 111 articles had been

¹¹ Sen. Rep. 176, 66th Cong., 1st sess., Part 3.

read and the reading was interrupted to take up the amendments proposed by the Committee to eliminate the United States from participation in certain work connected with the execution of the treaty.

The amendments eliminated the American representatives from the commissions to run the frontiers between Belgium and Germany, Poland and Germany, and Poland and Czecho-Slovakia, and from the commissions to administer the Saar Basin, Upper Silesia, East Prussia and Schleswig during the periods of the plebiscites and to carry out their results. They also eliminated the participation of the United States in future negotiations regarding the status of Luxemburg and from the proposed agreements with Poland and Czecho-Slovakia regarding the protection of minorities. The United States was further eliminated from any part in the appointment of the manager of the Central Rhine Commission, and from the acceptance of any right or title in Memel and Danzig or participation in the future settlement of their status.

The above amendments were debated until October 2, when they were put to a vote under a unanimous-consent agreement. All were rejected by votes ranging from 58 yeas to 30 yeas to votes without the formality of a roll call.

The reading of the treaty was resumed on October 7 and 8, when the amendments were reached transferring to China instead of Japan the German lease and rights in Shantung. Debate on these amendments continued until October 16, when they were also voted upon under a unanimous-consent agreement, and rejected by a vote of 35 yeas to 55 yeas. The reading of the treaty was immediately resumed and on the following day, October 17, the Committee's amendment was reached restricting the participation of the American member of the Reparation Commission to matters arising under Annex 3 to the reparation clauses, unless otherwise specifically instructed by his government to take part. The amendment was promptly voted upon and rejected by a *viva voce* vote. The reading of the treaty then proceeded until October 20 when it was completed.

On October 22 the Senate took up the first amendment, which had been passed over, intended to secure equality of voting of the United States in the Council and Assembly of the League of Nations.

This amendment proposed to insert the following proviso at the end of Article 3 of the covenant:

Provided, that when any member of the league has or possesses self-governing dominions or colonies or parts of empire, which are also members of the league, the United States shall have votes in the assembly or council of the league numerically equal to the aggregate vote of such member of the league and its self-governing dominions and colonies and parts of empire in the council or assembly of the league.

The amendment was rejected on October 27 by a vote of 38 yeas to 40 nays. The second Committee amendment on the same subject was then taken up. It proposed to insert the following paragraph in Article 15 of the Covenant:

Whenever the case referred to the assembly involves a dispute between one member of the league and another member whose self-governing dominions or colonies or parts of empire are also represented in the assembly, neither the disputant members nor any of their said dominions, colonies, or parts of empire shall have a vote upon any phase of the question.

Senator Shields offered the following substitute for the amendment of the Committee:

Provided further, That when imperial and federal governments and their self-governing dominions, colonies or states are members of the league, as originally organized or hereafter admitted, the empire or federal government and the dominions, colonies, or states shall, collectively, have only one membership, one delegate, and one vote in the council and only three delegates and one vote in the assembly.

The substitute was defeated on March 29 by a vote of 42 yeas to 49 nays; and the amendment proposed by the Committee was rejected on the same day by a vote of 36 yeas to 47 nays.

This concluded the amendments proposed by the Committee on Foreign Relations, and amendments from individual Senators were then in order. On October 29, Senator Johnson offered the following amendment:

When any member of the league has or possesses self-governing dominions or colonies or parts of empire, which are also members of the league, the United States shall have representatives in the council or assembly or any organization of labor or labor conference under the league or treaty numerically equal to the

aggregate number of representatives of such member of the league and its self-governing dominions and colonies and parts of empire in the council or assembly of the league or organization of labor or labor conference under the league or treaty, and such representatives of the United States shall have the same powers and rights as the representatives of said member and its self-governing dominions or colonies or parts of empire, and upon all matters whatsoever the United States shall have votes in the council and assembly and any organization of labor or labor conference under the league or treaty numerically equal to the aggregate vote cast or registered by any such member of the league and its self-governing dominions and colonies and parts of empire.

The proposed amendment went on to explain that its intent was "to give to the United States representation upon council or assembly and in any labor organization or labor conference under the league or treaty, a voting power in every respect and upon all questions equal to the aggregate representation and voting power of any member of the league and such member's self-governing dominions and colonies and parts of empire, and this amendment shall be literally applied and construed to effectuate fully said intent." It concluded by repeating the committee amendment just rejected.

The Johnson amendment was promptly rejected by a vote of 35 yeas to 42 nays.

On October 30, Senator La Follette moved to strike out Part XIII of the treaty dealing with the International Labor Organization. This motion was defeated on November 5 by a vote of 34 yeas to 47 nays. On November 4, Senator Lodge moved to strike out Articles 156, 157, and 158 of the treaty dealing with the question of Shantung. This proposal was immediately rejected by a vote of 26 yeas to 41 nays. On November 5, Senator Gore proposed to insert at the end of the first paragraph of Article 12 of the Covenant a proviso that members of the League should not resort to war until an advisory vote of the people shall have been taken, which was rejected on November 6 by a vote of 16 yeas to 67 nays.

The argument chiefly used by the opponents of textual amendments was that their adoption would necessitate a resubmission of the treaty to the Peace Conference, including Germany. As shown by the votes upon the amendments, the majority of the Senate was opposed to such a course. The opposition to amendments was so

evident that on the same day that they were taken up in the Senate for consideration (October 22), the Committee on Foreign Relations met for the purpose of substituting reservations for them.

On October 24, Senator Lodge, on behalf of the Committee on Foreign Relations, reported a new draft of the reservations already reported, together with certain additional reservations, making fourteen in all, preceded by a preamble. On November 6, after the Senate had rejected all of the proposed amendments, Senator Lodge moved the adoption of the new reservations and preamble. Voting upon them began the following day. The proceedings upon each were as follows:

RESOLVING CLAUSE OR PREAMBLE

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted by an exchange of notes as a part and a condition of this resolution of ratification by at least three of the four principal allied and associated powers, to wit, Great Britain, France, Italy, and Japan.

This clause was taken up and adopted on November 7 by a vote of 48 to 40. Previously a motion by Senator McCumber to strike out all after the word "ratification" in the sixth line had been rejected by a vote of 40 to 48. The same motion made by Senator Hitchcock on November 18, when the Senate was acting upon the report of the Committee of the Whole, was rejected by a vote of 36 to 45. A motion on November 7, by Senator Borah to amend so as to require the acceptance of the reservations by all four of the principal allied and associated Powers instead of three was defeated by a vote of 25 yeas to 63 nays. An amendment proposed by Senator King to provide for the implied acceptance of any Power by participation in proceedings authorized by the treaty was also rejected, the vote being 42 yeas to 46 nays.

RESERVATION No. 1.—*Withdrawal from the League.*

The United States so understands and construes Article 1 that in case of notice of withdrawal from the league of nations, as provided in said article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

This reservation was adopted on November 8 in the form recommended by the Committee, by a vote of 50 to 35. A motion by Senator Thomas to strike out the last clause providing for notice of withdrawal by a concurrent resolution, offered on November 7 but withdrawn and renewed on November 8 by Senator Walsh of Montana, was lost by 37 yeas to 49 nays. An amendment by Senator Gore that such notice might be given either by the President or by a concurrent resolution was rejected on November 8 by a vote of 18 yeas to 68 nays. On the same day a motion by Senator Nelson to change "concurrent" resolution to "joint" resolution was voted down, 39 yeas to 45 nays. Senator King then moved to amend the words "the United States shall be the sole judge" to read "any nation shall be the sole judge," and it failed to carry by a vote of 32 yeas to 52 nays.

RESERVATION No. 2.—*Guarantee of territorial integrity.*

The United States assumes no obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between nations—whether members of the league or not—under the provisions of article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide.

This reservation was adopted on November 13 as drafted by the Committee on Foreign Relations, by a vote of 46 to 33. Before its adoption several unsuccessful attempts to modify it were made. On November 10, Senator Thomas offered the following substitute:

That the suggestions of the council of the league of nations as to the means of carrying the obligations of article 10 into effect are only advisory, and that

any undertaking under the provisions of article 10, the execution of which may require the use of American military or naval forces or economic measures can under the Constitution be carried out only by the action of the Congress, and that the failure of the Congress to adopt the suggestions of the council of the league or to provide such military or naval forces or economic measures shall not constitute a violation of the treaty.

After this substitute was rejected by a vote of 36 yeas to 48 nays, a substitute by Senator Borah declaring that "the United States assumes no obligation, legal or moral, under article 10 and shall not be bound by any of the terms or conditions of said article" was also rejected on the same day, 18 yeas to 68 nays. Senator Walsh of Montana moved to strike out the clause "or authorize the employment of the military or naval forces of the United States," which was rejected, 38 yeas to 45 nays. He then moved the following addition to the reservation: "And the United States hereby releases all members of the league from any obligation to it under Article 10 and declines to participate in any proceeding by the council authorized thereby." The vote on this addition did not take place until November 13, when it was rejected, 4 yeas to 68 nays. On the same day Senator Thomas moved an amendment which would recognize the obligation of the United States to preserve the territorial integrity or political independence of other countries for a period of five years. This was rejected by a vote of 32 yeas to 46 nays. Thereupon, Senator Walsh of Montana offered a proviso to the reservation under which the United States would assume for a period of five years the obligation to preserve the territorial integrity and political independence of Poland, Czecho-Slovakia and the Serb-Croat-Slovene State. This proviso was rejected by a vote of 32 yeas to 44 nays. Senator McKellar moved a proviso under which the United States would guarantee for five years the sovereignty of France over Alsace-Lorraine, which was also rejected, 31 yeas to 46 nays. A substitute offered by Senator Hitchcock was next rejected, 32 yeas to 44 nays, interpreting the advice mentioned in Article 10 of the Covenant as to the employment of naval and military forces to be "merely advice which every member nation is free to accept or reject, according to the conscience and judgment of its then existing government," and declaring that "in the United States this advice can only be ac-

cepted by action of the Congress at the time in being." Another substitute was then offered by Senator Owen declaring that the United States, in assuming the obligations of Article 10 of the Covenant, "does so with the understanding that the advice or recommendation of the council or assembly under articles 10 and 15 is purely advisory and absolutely subject to such judgment and action as the Congress of the United States may find justified by the facts in any case submitted." It was rejected by a vote of 33 yeas to 44 nays; whereupon Senator Hitchcock proposed to add to the reservation the following paragraph:

But, finally, it shall be the declared policy of our Government, in order to meet fully and fairly our obligations to ourselves and to the world, that the freedom and peace of Europe being again threatened by any power or combination of powers, the United States will regard such a situation with grave concern as a menace to its own peace and freedom, will consult with other powers affected with a view to devising means for the removal of such menace, and will, the necessity arising in the future, carry out the same complete accord and coöperation with our chief cobelligerents for the defense of civilization.

The proposed amendment was rejected, 34 yeas to 45 nays.

RESERVATION No. 3.—*Mandates.*

No mandate shall be accepted by the United States under Article 22, part 1, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States.

This reservation was adopted without a roll call on November 15, in Committee of the Whole, in the form recommended by the Committee on Foreign Relations. When the report of the Committee was before the Senate for concurrence on November 18, Senator Lodge demanded a roll call and the reservation was adopted by a vote of 52 to 31.

RESERVATION No. 4.—*Domestic questions.*

The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction, and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration

or to the consideration of the council or of the assembly of the league of nations, or any agency thereof, or to the decision or recommendation of any other power.

This reservation was adopted in Committee of the Whole on November 15 by a vote of 59 to 36 after it had been amended on motion of Senator Hale so as to exclude boundary questions from arbitration or the jurisdiction of the League of Nations, but the amendment was eliminated in the Senate on November 18. On November 15, a substitute offered by Senator Hitchcock, simply excluding from the jurisdiction of the League any matter which a member nation "considers to be in international law a domestic question, such as immigration, labor, tariff, or other matter relating to its internal or coastwise affairs," was rejected by a vote of 43 yeas to 52 nays.

RESERVATION No. 5.—*Monroe Doctrine.*

The United States will not submit to arbitration or to inquiry by the assembly or by the council of the league of nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone, and is hereby declared to be wholly outside the jurisdiction of said league of nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

The reservation as reported by the Committee on Foreign Relations was adopted on November 15 by a vote of 55 to 34, after two substitutes offered by Senators Hitchcock and Pittman had been rejected, 43 yeas to 51 nays, and 42 yeas to 52 nays,¹² and a motion by Senator

¹² These substitutes read:

SENATOR HITCHCOCK:

That the national policy of the United States known as the Monroe Doctrine, as announced and interpreted by the United States, is not in any way impaired or affected by the covenant of the league of nations and is not subject to any decision, report, or inquiry by the council or assembly.

SENATOR PITTMAN:

The United States does not bind itself to submit for arbitration or inquiry by the assembly or the council any question which, in the judgment of the United States, depends upon or involves its long-established policy commonly known as the Monroe Doctrine, and it is preserved unaffected by any provision in the said treaty contained.

Smith to strike out after the words "said doctrine" the clause "is to be interpreted by the United States alone" had been rejected without a roll call.

RESERVATION No. 6.—*Shantung.*

The United States withholds its assent to Articles 156, 157, and 158, and reserves full liberty of action with respect to any controversy which may arise under said articles between the Republic of China and the Empire of Japan.

This reservation was adopted on November 15 by a vote of 53 to 41 in the form recommended by the Committee. Before its adoption Senator McCumber moved a substitute reading: "The United States refrains from entering into any agreement on its part in reference to the matters contained in Articles 156, 157, and 158, and reserves full liberty of action in respect to any controversy which may arise in relation thereto." It was rejected by a vote of 42 yeas to 50 nays. Senator Pittman then moved a substitute which provided that in ratifying the treaty the United States understands that the rights and interests renounced by Germany in favor of Japan are to be returned by Japan to China upon the adoption of the treaty in accordance with the notes exchanged between Japan and China on May 25, 1915. This substitute was likewise rejected, the vote being 39 yeas to 50 nays.

RESERVATION No. 7.—*Appointment of American representatives in the League.*

The Congress of the United States will provide by law for the appointment of the representatives of the United States in the assembly and the council of the league of nations, and may in its discretion provide for the participation of the United States in any commission, committee, tribunal, court, council or conference, or in the selection of any members thereof, and for the appointment of members of said commissions, committees, tribunals, courts, council, or conferences, or any other representatives under the treaty of peace, or in carrying out its provisions, and until such participation and appointment have been so provided for and the powers and duties of such representatives have been defined by law, no person shall represent the United States under either said league of nations or the treaty of peace with Germany or be authorized to perform any act for or on behalf of the United States thereunder, and no citizen of

the United States shall be selected or appointed as a member of said commissions, committees, tribunals, courts, councils, or conferences except with the approval of the Senate of the United States.

RESERVATION No. 8.—*Reparation Commission.*

The United States understands that the Reparation Commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

RESERVATION No. 9.—*Expenses of the League.*

The United States shall not be obligated to contribute to any expenses of the league of nations, or of the secretariat, or of any commission, or committee, or conference, or other agency, organized under the league of nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States.

RESERVATION No. 10.—*Armaments.*

If the United States shall at any time adopt any plan for the limitation of armaments proposed by the council of the league of nations under the provisions of article 8, it reserves the right to increase such armaments without the consent of the council whenever the United States is threatened with invasion or engaged in war.

RESERVATION No. 11.—*Relations with nationals of covenant-breaking State.*

The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in article 16 of the covenant of the league of nations, residing within the United States or in countries other than that violating said article 16, to continue their commercial, financial, and personal relations with the nationals of the United States.

RESERVATION No. 12.—*Illegal acts in contravention of American rights.*

Nothing in articles 296, 297, or in any of the annexes thereto, or in any other article, section, or annex of the treaty of peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratification, or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

All of the above reservations were adopted on November 15, in the form recommended by the Committee on Foreign Relations, by the following votes: No. 7, 53 to 40; No. 8, 54 to 40; Nos. 9 and 10, 56 to 39; No. 11, 53 to 41; No. 12, 52 to 41.

RESERVATION No. 13.—*International Labor Organization.*

The United States withholds its assent to Part XIII (articles 387 to 427, inclusive) unless Congress, by act or joint resolution, shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

This reservation was offered by Senator McCumber on November 17, and agreed to on November 18 by a vote of 54 to 35, after a substitute by Senator King withholding entirely assent to Part XIII of the treaty, excepting it from the act of ratification and declining to participate in carrying out its provisions, had been voted down 43 yeas to 48 nays.

RESERVATION No. 14.—*Voting power of Self-Governing Dominions.*

The United States assumes no obligations to be bound by any election, decision, report, or finding of the council or assembly in which any member of the league and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote, and assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the league if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

This reservation was offered by Senator Lenroot on November 18, and agreed to by a vote of 55 to 38. It was adopted after Senator Johnson had offered in slightly modified form as a reservation his textual amendment on this subject rejected on October 29 and it had again been defeated, 43 yeas to 46 nays; and after the following addition proposed by Senator McCumber had been rejected by a vote of 3 yeas to 86 nays: "Unless upon the submission of the matter to the council or assembly for decision, report, or finding, the United

States consents that the said dominions, colonies, or parts of empire may each have the right to cast a separate vote upon the said election, decision, report or finding."

REJECTED COMMITTEE RESERVATIONS

On November 17 the Senate, as in Committee of the Whole, rejected by votes of 29 yeas to 64 nays, and 36 yeas to 56 nays, the following reservations recommended by the Committee on Foreign Relations:

The United States declines to accept as trustee, or in her own right, any interest in or any responsibility for the government or disposition of the overseas possessions of Germany, her rights and titles to which Germany renounces to the principal allied and associated powers under articles 119 to 127, inclusive.

The United States reserves to itself exclusively the right to decide what questions affect its honor or its vital interests and declares that such questions are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the league of nations or any agency thereof or to the decision or recommendation of any other Power.

An attempt was made on November 18 to have the Senate restore the latter, but it was again rejected by a vote of 33 yeas to 50 nays.

OTHER RESERVATIONS REJECTED

A number of reservations offered by individual Senators were also rejected, as follows:

On November 17 Senator Owen offered a reservation declaring that "the protectorate in Great Britain over Egypt is understood to be merely a means through which the nominal suzerainty of Turkey over Egypt shall be transferred to the Egyptian people, and shall not be construed as a recognition by the United States of any sovereign rights over the Egyptian people in Great Britain or as depriving the people of Egypt of any of their rights of self-government and independence." This was rejected by a vote of 37 yeas to 45 nays. Senator Owen attempted to have the same reservation adopted when the report of the Committee of the Whole was being considered in the Senate on November 18, but he again failed by a vote of 31 yeas to 46 nays.

After the rejection of his reservation regarding Egypt on November 17, Senator Owen the same day proposed the following reservation, which was rejected by a *viva voce* vote:

Resolved, That the United States in ratifying the covenant of the league of nations does not intend to be understood as modifying in any degree the obligations entered into by the United States and the Entente Allies in the agreement of November 5, 1918, upon which as a basis the German Empire laid down its arms. The United States regards that contract to carry out the principles set forth by the President of the United States on January 8, 1917, and in subsequent addresses, as a world agreement, binding on the great nations which entered into it, and that the principles there set forth will be carried out in due time through the mechanism provided in the covenant, and that article 23, paragraph (b), pledging the members of the league to undertake to secure just treatment of the native inhabitants under their control, involves a pledge to carry out these principles.

On November 18, Senator Phelan proposed that the United States reserve the right to interpret the covenant of the League of Nations and the treaty of peace in harmony with the principles laid down by President Wilson's fourteen points. This was voted down by 12 yeas to 79 nays. The following resolution of ratification was then offered by Senator Knox as a substitute for all of the reservations that had been adopted:

Resolved, That the Senate of the United States unreservedly advises and consents to the ratification of this treaty in so far as it provides for the creation of a status of peace between the United States and Germany.

Resolved further, That the Senate of the United States advises and consents to the ratification of this treaty, reserving to the United States the fullest and most complete liberty of action in respect to any report, decision, recommendation, action, advice, or proposals of the league of nations or its executive council or any labor conference provided for in the treaty, and also the sole right to determine its own relations and duties and course of action toward such league or toward any member thereof, or toward any other nation in respect to any question, matter, or thing that may arise while a member of such league, anything in the covenants or constitution of such league or the treaty of Versailles to the contrary notwithstanding, and also reserves to itself the unconditional right to withdraw from membership in such league and to withdraw from membership in any body, board, commission, committee, or organization whatever set up in any part of the treaty for the purpose of aiding its execution or otherwise, effecting by such withdrawal as complete a release of any further obligations and duties under such treaty as if the United States had never been a party thereto. It is also

Resolved further, That the validity of this act of ratification depends upon the affirmative act of the principal allied powers named in the treaty of peace with Germany, approving these reservations and certifying said approval to the United States within 60 days after the deposit of the resolution of ratification by the United States.

It was rejected by a vote of 30 yeas to 61 nays.

Senator Jones of Washington offered a reservation prohibiting the American representative in the Council of the League from giving his consent to any proposal involving the use of the military or naval forces of the United States until he had secured the authority of Congress, which was rejected by a vote of 34 yeas to 50 nays.

A reservation submitted by Senator Gore, declaring that

Nothing contained in this treaty or covenant shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said treaty or covenant be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions,

was then rejected by a vote of 28 yeas to 50 nays.

Senator France moved a proviso to Reservation No. 2 that the United States should have the privilege of nominating any non-member nation for membership in the League and of offering any amendment to the covenant at any time, and in case of unfavorable action by the League upon either proposal the United States reserved the right to withdraw immediately without condition or notice. The rejection of this proviso was accomplished without a roll call; and Senator France then offered a second reservation providing that, in accordance with the principles declared in Article 22, "the principal allied and associated powers shall renounce in favor of the United States all their rights and titles to the colonies and territories in Africa formerly held by Germany . . . and the United States shall act as mandatory of such territories to the end that the inhabitants of these colonies and territories may be civilized, educated, and fitted for self-determination," which was rejected by a vote of 3 yeas to 71 nays.

Senator Owen submitted the following modification of the reservation proposed by him on November 17: "The United States holds that the principles covered by the letter of Secretary of State of November 5, 1918, as the conditions upon which the armistice was based, are binding and the covenant of the league must be interpreted in accordance with those principles." This was rejected by a *viva voce* vote.

Senator Jones of Washington then proposed the addition of a paragraph giving notice on behalf of the United States that it will withdraw from the League at the end of two years unless Shantung shall have been restored to China in full sovereignty, the relations of Ireland to the British Empire shall have been adjusted satisfactorily to the people of Ireland, the independence of Egypt recognized, and conscription abolished by each member of the League. This proposal was also rejected by a *viva voce* vote.

Six reservations introduced by Senator La Follette upon the following subjects were severally rejected by the votes indicated:

Insuring to all peoples the right of self-government—rejected 24 yeas to 49 nays.

Abolishing conscription—rejected 21 yeas to 54 nays.

Giving the people of all nations a referendum vote on war—rejected 13 yeas to 58 nays.

Limitation of armaments—rejected 10 yeas to 60 nays.

Prevention of forcible annexations—rejected 19 yeas to 51 nays.

Prohibiting the use of mandates over weaker states for exploitation of the inhabitants and resources of the country—rejected 23 yeas to 51 nays.

A reservation to Article 11 of the Covenant proposed by Senator Walsh of Massachusetts to safeguard the rights of free speech, the liberty of the press, and the advocacy of the principles of national independence and self-determination, failed of adoption by a vote of 36 yeas to 42 nays.

REJECTION OF THE RESOLUTION OF RATIFICATION

After all of the reservations had been acted upon on November 18, those adopted in the Committee of the Whole were reported to the Senate and concurred in as adopted, except No. 4, which was amended as previously indicated.¹³ The second rejection of Senator Reed's reservation regarding vital interests and Senator Owen's reservation regarding Egypt, also previously mentioned,¹⁴ ended the Senate's consideration of the reservations.

The resolution of ratification, including the reservations adopted, was presented by Senator Lodge immediately upon the convening of the Senate on November 19, when ninety-three of the ninety-six Senators answered the roll call. After a number of Senators had explained why they intended to vote for or against the resolution of ratification, the vote was taken and resulted in 39 for and 55 against, so that the resolution of ratification was rejected, two-thirds of the Senators present not having voted in favor of it. A formal motion to reconsider the vote was adopted; whereupon the Senate, by a vote of 41 to 50, rejected a motion by Senator Hitchcock that the treaty be referred to the Committee of the Whole with instructions to report it back to the Senate with the following reservations:

That any member nation proposing to withdraw from the league on two years' notice is the sole judge as to whether its obligations referred to in Article 1 of the league of nations have been performed as required in said article.

That no member nation is required to submit to the league, its council, or its assembly, for decision, report, or recommendation, any matter which it considers to be in international law a domestic question such as immigration, labor, tariff, or other matter relating to its internal or coastwise affairs.

That the national policy of the United States known as the Monroe Doctrine, as announced and interpreted by the United States, is not in any way impaired or affected by the covenant of the league of nations and is not subject to any decision, report, or inquiry by the council or assembly.

That the advice mentioned in article 10 of the covenant of the league which the council may give to the member nations as to the employment of their naval and military forces is merely advice which each member nation is free to accept or reject according to the conscience and judgment of its then existing Government, and in the United States this advice can only be accepted by action of the

¹³ *Supra*, p. 178.

¹⁴ *Supra*, p. 182.

Congress at the time in being, Congress alone under the Constitution of the United States having the power to declare war.

That in case of a dispute between members of the league, if one of them have self-governing colonies, dominions, or parts which have representation in the assembly, each and all are to be considered parties to the dispute, and the same shall be the rule if one of the parties to the dispute is a self-governing colony, dominion, or part, in which case all other self-governing colonies, dominions, or parts, as well as the nation as a whole, shall be considered parties to the dispute, and each and all shall be disqualified from having their votes counted in case of any inquiry of such dispute made by the assembly.

Senator Lodge's resolution of ratification was then reconsidered and again rejected by 41 yeas to 51 nays.

A resolution of unconditional ratification offered by Senator Underwood was also rejected, the vote being 38 yeas and 53 nays.

Whereupon the Senate adjourned.

THE TREATY AGAIN BEFORE THE SENATE

Congress convened in regular session on December 2, 1919, but no formal action was taken upon the peace treaty until February 9, on which date the Senate recommitted the treaty to the Committee on Foreign Relations with instructions to report it back immediately, together with the resolution of ratification rejected in November, including the reservations previously adopted. These instructions were complied with on the following day. On February 11 Senator Lodge presented certain proposed amendments to the reservations which he stated had been discussed by an informal bipartisan committee during the last two weeks of January.¹⁵ The action subsequently taken upon each reservation was as follows:

RESERVATION No. 1—*Withdrawal from the League*

On February 16, Senator Lodge proposed to change the notice of withdrawal from a concurrent resolution of Congress to notice by "the President or by Congress alone whenever a majority of both Houses may deem it necessary." This amendment was rejected on February 21 by a vote of 32 yeas to 33 nays. A substitute amendment offered by Senator Hitchcock providing that notice of with-

¹⁵ See Senate Document No. 193, 66th Cong., 2d sess.

drawal may be given by a joint resolution instead of a concurrent resolution of Congress was also rejected, 26 yeas to 38 nays. The difference between a concurrent resolution and a joint resolution was stated in debate to be that the former does not require the signature of the President, while the latter does. The purpose of both the amendment by Senator Lodge and the substitute of Senator Hitchcock was to meet the objection to the constitutionality of the reservation adopted on November 19 in that it purported to deprive the President of participation in foreign affairs vested in him by the Constitution. The argument was ineffective, for the reservation was readopted in its original form on February 21 by a vote of 45 to 20.

RESERVATION No. 2.—*Guarantee of territorial integrity*

Instead of being considered in its regular order, this reservation was postponed until March 12. It related to Article 10 of the Covenant of the League of Nations which was the crux of the contest over the ratification of the treaty. On that date Senator Lodge proposed the following substitute for the reservation adopted on November 19:

The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, whether members of the league or not, under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

For the foregoing, Senator Frelinghuysen proposed to substitute the following: "The United States assumes no obligation to preserve the territorial integrity or political independence of any other country, or to interfere in controversies between nations or to employ its military or naval forces or its resources for any purpose under any article of the treaty."

The debate upon this reservation continued until March 15, when the Frelinghuysen substitute was defeated by a vote of 17 yeas to 59 nays. Two substitutes were then offered by Senator Kirby in succession, as follows:

The United States assumes no obligation to employ its military or naval forces or the economic boycott to preserve the territorial integrity or political independence of any other country under the provisions of article 10, or to employ the military or naval forces of the United States under any other article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war, shall, by act or joint resolution, so provide. Nothing herein shall be deemed to impair the obligation in article 16 concerning the economic boycott.

The United States declines to assume any binding or legal obligation to preserve the territorial integrity or political independence of any other country under the provisions of article 10 or to employ the military or naval forces of the United States under any article of the treaty for any purpose; but the Congress, which under the Constitution has the sole power in the premises, will consider and decide what moral obligation, if any, under the circumstances of any particular case, when it arises, should move the United States in the interest of world peace and justice to take action therein and will provide accordingly.

The first was rejected 31 yeas to 45 nays, and the second 30 yeas to 46 nays. The following substitute offered by Senator King was then rejected without a roll call:

The United States understands that, by article 10 the United States undertakes separately to respect the territorial integrity and existing political independence of each other member of the league; but that article 10 does not impose upon the United States the separate, sole, and singular duty to preserve the territorial integrity and existing political independence of every member of the league as against the external aggression of the other powers; but only that in case of such aggression or threat of the same, the council will advise upon the means for preserving the territorial integrity and existing political independence of the member against which such aggression is exerted, and will recommend to members of the league the measures which it may deem proper and necessary to protect the covenants of the league, and that the United States may consider such recommendations and take such action as Congress may in its discretion deem appropriate in such case.

Senator Simmons then offered the following substitute, but it was rejected, 27 yeas to 51 nays:

The United States agrees to use its friendly offices, when requested so to do under the provisions of article 10, in assisting to procure a just and peaceful

settlement of territorial or political controversies between nations, or to protect any member of the league from external aggressions; but it does not assume any obligation to use its military or naval forces, or its financial or economic resources for the purpose of intervention in the controversies or conflicts between nations, or to protect the territorial integrity or political independence of any nation under the provisions of article 10, unless in any particular case the Congress, in the exercise of full liberty of action and in the light of full information as to the national justice and human rights involved, shall by act or joint resolution so provide. Nothing herein shall be deemed to impair the obligations of the United States under article 16.

Senator Simmons offered his substitute again in the Senate on March 18, and it was laid on the table by a vote of 45 to 34.

Senator Walsh of Montana proposed that the following paragraph be added to the substitute offered by Senator Lodge, but the proposal was rejected by a vote of 34 yeas to 44 nays:

Any act or threat of external aggression involving the territorial integrity or political independence of any nation, whether a member of the league or not, which, in the judgment of the United States menaces or threatens the peace of the world, will be a matter of grave concern to the United States, and assurance is hereby given that the United States will seek to cooperate, entirely within the powers conferred by the Constitution, with the other members of the league to the end that such menace or threat to the peace of the world be removed.

The substitute for this reservation offered by Senator Hitchcock on November 13¹⁶ and rejected was now again offered by Senator King and again rejected, 31 yeas to 47 nays.

Another substitute offered by Senator France affirming the doctrine of self-determination, expressing hope for the liberation of Ireland, India and Egypt, and declaring that the United States will not interfere to preserve the territorial integrity of any imperial country in a contest with a subject nation or colony for independence, was rejected without a roll call.

During the debate on March 13, Senator Lodge, without objection, modified his substitute by inserting after the word "nations" in line 5, the words "including all controversies relating to territorial integrity or political independence." When the Senate had this reservation up for final action on March 18, an attempt by Sen-

¹⁶ See p. 176, *supra*.

ator Simmons to add after the insertion by Senator Lodge the words "by the employment of its military or naval forces, its resources, or any form of economic boycott" and to omit the words "in any way" in line 4, was laid on the table by a vote of 44 to 35. The same action was taken by a vote of 45 to 34 on an amendment offered by Senator Smith to omit the clause "or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the league or not."

Mr. Lodge's amendment in the nature of a substitute was, on March 15, agreed to by a vote of 56 to 24, and Reservation No. 2 readopted as modified by a vote of 56 yeas to 26 nays.

RESERVATION No. 3.—*Mandates.*

This reservation was readopted in its original form on February 26 without debate by a vote of 68 yeas to 4 nays.

RESERVATION No. 4.—*Domestic questions*

On February 26, Senator Lodge moved to insert the word "internal" before the word "commerce" in the fifth line, and to omit the words "and of other domestic questions" after the word "drugs" in the sixth line. He stated that these changes had been suggested in the bipartisan conference, but after they were criticized by several Senators, he withdrew them. On March 2, Senator Fletcher again moved the omission of the word "commerce," but his motion was defeated by a vote of 34 yeas to 44 nays. The same amendment was renewed in the Senate on March 18 by Senator Smith and laid on the table by a vote of 40 to 33. The following substitutes offered respectively by Senators Hitchcock and King on March 2 were promptly rejected, the first by a vote of 36 yeas to 44 nays and the second without a roll call:

That the United States is not required, and hereby declines, to submit to the league, its council or assembly, for decision, report, or recommendation, any matter which it considers to be a domestic question, such as immigration, labor, tariff, or other matter relating to its internal or coastwise affairs.

The United States understands that the jurisdiction and authority of the council or the assembly of the league do not include any power over the proper domestic, internal, or national police of any member of the league, and that said articles do not confer upon the league any powers with respect to immigration, imposts, property, inheritance, naturalization, citizenship, labor, coastwise traffic, or any other matter of proper domestic policy. This enumeration of matters of policy shall not in any wise be taken to exclude from the authority of the United States any other subject of domestic policy properly within the national political powers and sovereignty of the United States, as recognized by the law and custom of nations. The United States will not submit to arbitration or to consideration of the council any question which in its judgment is a question within its domestic jurisdiction and sovereignty.

The reservation was then adopted in its original form by a vote of 56 yeas to 25 nays.

RESERVATION No. 5—*Monroe Doctrine*

On March 2, the following combination of the substitutes for this reservation, offered by Senators Hitchcock and Pittman on November 15¹⁷ was offered and again rejected by a vote of 34 yeas to 43 nays:

That the national policy of the United States known as the Monroe Doctrine, as announced and interpreted by the United States, is not in any way impaired or affected by the covenant of the League of Nations, and no question which in the judgment of the United States depends upon or relates to such doctrine shall be subject to any inquiry, report, or decision by the council or assembly.

Whereupon the reservation was readopted in its original form by a vote of 58 to 22.

RESERVATION No. 6—*Shantung*

On March 3, Senator Lodge moved to strike from the original reservation the words "between the Republic of China and the Empire of Japan." The motion was agreed to on March 4, 69 yeas to 2 nays. Senator Hitchcock then offered the following substitute for the reservation, which was rejected by a vote of 27 yeas to 41 nays:

That in advising and consenting to the ratification of said treaty, the United States does so with the understanding that the sovereign rights and interests

¹⁷ See p. 178, *supra*.

renounced by Germany in favor of Japan under the provisions of articles 156, 157 and 158 of said treaty, or now exercised by Japan, are to be returned by Japan to China at the termination of the present war by the ratification of this treaty.

The original reservation, as amended by Senator Lodge, was thereupon readopted by a vote of 48 to 21.

RESERVATION No. 7—*Appointment of American representatives in the League*

Senator Lodge on March 4 offered the following substitute for the original reservation:

No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Congress of the United States providing for his appointment and defining his powers and duties.

This was one of the compromises which Senator Lodge said had been tentatively agreed upon by the bipartisan conference, and when Senator Hitchcock criticized it Senator Lodge withdrew it. It was immediately reoffered by Senator Walsh of Montana and agreed upon by a vote of 37 to 32. The reservation as thus amended was thereupon readopted by a vote of 55 yeas to 14 nays.

RESERVATION No. 8.—*Reparation Commission.*

This reservation was readopted in its original form on March 5 by a vote of 41 to 22, after the following substitute offered by Senator Hitchcock had been rejected by a vote of 23 yeas to 37 nays: "The United States understands that the Reparation Commission will in its control over German economic resources in no respect so exert its powers as to discriminate against the commerce of the United States with Germany."

RESERVATION No. 9—*Expenses of the League*

This reservation was called up on March 5. On March 6 the following proviso was added, upon motion of Senator Kellogg, by a vote of 55 yeas to 2 nays:

Provided, that the foregoing limitation shall not apply to the United States's proportionate share of the expenses of the office force and salary of the secretary-general.

The Senate rejected without a roll call a substitute offered by Senator King reading: "The United States shall not be obligated to contribute to the expenses of the league of nations or of any official thereof or of any organization or commission thereunder unless and until Congress shall have by appropriate legislation provided therefor."

Reservation No. 9 as amended was thereupon readopted by a vote of 46 to 25.

RESERVATION No. 10—*Armaments*

On March 6, Senator New offered the following substitute:

No plan for the limitation of armaments proposed by the council of the league of nations under provisions of article 8 shall be held as binding the United States until the same shall have been accepted by Congress.

Senator McCormick on March 8 proposed the following addition to Senator New's substitute, which he accepted:

And the United States reserves the right to increase its armament without the consent of the council whenever the United States is threatened with invasion or engaged in war.

On that day the substitute and addition were agreed to by a vote of 49 to 27, and Reservation No. 10, as thus amended, was thereupon readopted by a vote of 49 to 26.

RESERVATION No. 11—*Relations with nationals of covenant-breaking State*

This reservation was readopted on March 8 by a vote of 44 to 28, after its phraseology had been improved without a roll call by insert-

ing in line four the words "such covenant-breaking state" in lieu of the words "that violating said article 16."

RESERVATION No. 12—*Illegal acts in contravention of American rights*

RESERVATION No. 13—*International Labor Organization*

These reservations were readopted in their original form on March 8, by votes of 45 to 27, and 44 to 27, respectively.

RESERVATION No. 14.—*Voting power of Self-Governing Dominions*

The following substitute for the original reservation was offered by Senator Lodge on March 8:

Until Part 1, being the covenant of the League of Nations, shall be so amended as to provide that the United States shall be entitled to cast a number of votes equal to that which any member of the league and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast, the United States assumes no obligation to be bound, except in cases where Congress has previously given its consent, by any election, decision, report, or finding of the council or assembly in which any member of the league and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote.

The United States assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the league if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

It was voted upon in two parts on March 9, the first part (the first five lines down to and including the word "cast") being accepted by a vote of 49 to 28, and the remainder by 55 to 22, after an amendment by Senator Walsh of Montana to change the clause "except in cases where Congress has previously given its consent" to read "except in cases in which its consent has previously been given" had been lost 33 yeas to 45 nays.

Senator McCormick offered an amendment providing that unless within a year after ratification the Covenant shall be so amended as to give the United States an equal number of votes to that of any member of the League and its self-governing dominions and colonies, the United States shall cease to be a member of the league, which was

rejected by a vote of 19 yeas to 57 nays. Senator Phelan then proposed a substitute identical with those offered by Senator Johnson on October 29 and November 18.¹⁸ The substitute was again rejected, this time by a vote of 4 yeas to 73 nays. A substitute for this reservation, offered by Senator Hitchcock and identical with the fifth reservation offered by him to the treaty in the Senate on November 18, was also rejected by a vote of 34 yeas to 41 nays; and Reservation No. 14, as amended upon motion of Senator Lodge, was then agreed to (March 9) by a vote of 57 to 20.

RESERVATION No. 15.—*Sympathy for Ireland.*

In consenting to the ratification of the treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations.

The above resolution was offered by Senator Gerry on March 18, and adopted by a vote of 38 yeas to 36 nays, and it became Reservation No. 15 to the treaty. An attempt by Senator Thomas to add to the reservation a declaration of sympathy with Korea was rejected by a vote of 34 yeas to 36 nays. A motion by Senator Lodge to amend it by omitting the clause declaring the adherence of the United States to the principle of self-determination was rejected by a vote of 37 yeas to 42 nays, and upon being later moved in the Senate by Mr. Calder, the same motion was laid on the table by a vote of 51 to 30. Senator Sterling attempted in the Senate to strike from the reservation the words "a consummation it is hoped is at hand," but the attempt failed by a vote of 70 to 11.

REJECTED RESERVATIONS

After the reservations of the Foreign Relations Committee were completed on March 15, 1920, additional reservations were proposed by individual Senators.

¹⁸ See pp. 172, 181, *supra*.

Senator Owen again endeavored to secure the adoption of a reservation regarding Egypt, the reservation this time interpreting Great Britain's protectorate "to have been merely a war measure to preserve the integrity and independence of Egypt during the war." Debate upon the proposed reservation continued until March 17, when it was laid on the table by a vote of 54 to 21.

Senator Norris then proposed a reservation withholding the assent of the United States to Article 147 of the treaty in so far as the recognition of the British protectorate over Egypt is extended beyond the going into force of the peace treaty, which was rejected by a vote of 15 yeas to 51 nays.

A reservation was proposed by Senator Reed on March 17, as follows, the language of which he stated was taken from Article 3 of President Wilson's original plan for the covenant:¹⁹

The United States construes Part 1 of the treaty of peace with Germany, known as the covenant of the League of Nations, to the effect that such territorial readjustments, if any, as may in the future become necessary by reason of changes in present racial conditions and aspirations, or present social and political relationship, pursuant to the principle of self-determination, and also such territorial readjustments as may, in the judgment of three-fourths of the council or assembly, be demanded by the welfare and manifest interest of the people concerned may be effected if agreeable to those peoples. The high contracting Powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary.

¹⁹ The plan referred to was presented to the Senate Committee on Foreign Relations on Sept. 12, 1919, by Mr. William C. Bullitt, who stated that "it is the President's original proposal, written on his own typewriter, I believe, which was presented to me on January 10 by Colonel House."¹¹ Article 3 of the plan is as follows:

"The contracting powers unite in guaranteeing to each other political independence and territorial integrity; but it is understood between them that such territorial readjustments, if any, as may in the future become necessary by reason of changes in present racial conditions and aspirations or present social and political relationships, pursuant to the principle of self-determination, and also such territorial readjustments as may in the judgment of three-fourths of the delegates be demanded by the welfare and manifest interest of the peoples concerned, may be effected if agreeable to those peoples; and that territorial changes may in equity involve material compensation. The contracting powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary." (Sen. Doc. 106, 66 Cong., 1st sess., p. 1166.)

After debate, the proposed reservation was laid on the table by a vote of 46 to 21.

Another reservation of Senator Owen was then renewed, stating that in ratifying the Covenant it is not intended to modify "the obligations entered into by the United States and the Entente Allies under the agreement of November 5, 1918, upon which as a basis the German Empire laid down its arms." It was again rejected by a vote of 12 yeas to 55 nays.

Senator Lenroot proposed a declaration of policy by the Government of the United States "that the freedom and peace of Europe being again threatened by any power or combination of powers, the United States will regard such a situation with grave concern and will consider what, if any, action it will take in the premises." The declaration was rejected by a vote of 25 yeas to 39 nays.

On March 18, Senator Reed again sought to add the reservation regarding honor and vital interests which was rejected on November 17.²⁰ It was again rejected by a vote of 27 yeas to 48 nays. Another reservation offered by Senator Reed declaring that "the United States assumes no obligation to employ its military or naval forces or resources or any form of economic discrimination under any article of the treaty" was also rejected, the vote being 17 yeas to 52 nays. Senator Reed then proposed to modify the reservation as follows: "The United States assumes no obligation to employ its military or naval forces or resources under any article of the treaty," which was likewise rejected by a vote of 16 yeas to 57 nays.

A reservation offered by Senator Gore to prevent any mandatory from monopolizing or enjoying any preference, without the consent of the Council, in respect of the natural resources of territory placed under its control, was rejected without a roll call.

SECOND REJECTION OF THE TREATY

There being no further amendments or reservations to consider, the treaty was immediately, on March 18, reported to the Senate, and the reservations agreed to as in Committee of the Whole were concurred in *en bloc* without a roll call, except Nos. 2, 4, and 15,

²⁰ *Supra*, p. 182.

which, after the attempts to amend them had again failed, as hereinbefore explained,²¹ were concurred in by the following votes: No. 2, 54 yeas to 26 nays; No. 4, *viva voce*; No. 15, 45 yeas to 38 nays.

On the following day, March 19, the resolving clause was, upon motion of Senator Lodge, without a roll call, amended by omitting the clause requiring the acceptance of the reservations by an exchange of notes by three of the allied and associated powers and providing in lieu thereof that the reservations be accepted

as a part and condition of this resolution of ratification by the allied and associated powers, and the failure on the part of the allied and associated powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States of such reservations and understandings by said powers.

An amendment to this clause, moved by Senator Brandegee, requiring the instrument of ratification to be deposited within 60 days of ratification by the Senate in order to bind the United States, was rejected by a vote of 41 yeas to 42 nays.

The vote was then taken on the resolution of ratification, including the fifteen reservations as a part and condition thereof, which in final form read as follows:

RESOLUTION OF RATIFICATION.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted as a part and a condition of this resolution of ratification by the allied and associated powers and a failure on the part of the allied and associated powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States shall be taken as a full and final acceptance of such reservations and understandings by said powers:

1. The United States so understands and construes article 1 that in case of notice of withdrawal from the League of Nations, as provided in said article, the United States shall be the sole judge as

²¹ See pp. 190, 191, 196, *supra*.

to whether all its international obligations and all its obligations under the said covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the league or not, under the provisions of article 10, or to employ the military or naval forces of the United States, under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under article 22, Part 1, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coast-wise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power.

5. The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

6. The United States withholds its assent to articles 156, 157, and 158, and reserves full liberty of action with respect to any controversy which may arise under said articles.

7. No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Con-

gress of the United States providing for his appointment and defining his powers and duties.

8. The United States understands that the reparation commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States: *Provided*, That the foregoing limitation shall not apply to the United States' proportionate share of the expense of the office force and salary of the secretary general.

10. No plan for the limitation of armaments proposed by the council of the League of Nations under the provisions of article 8 shall be held as binding the United States until the same shall have been accepted by Congress, and the United States reserves the right to increase its armament without the consent of the council whenever the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in article 16 of the covenant of the League of Nations, residing within the United States or in countries other than such covenant-breaking State, to continue their commercial, financial, and personal relations with the nationals of the United States.

12. Nothing in articles 296, 297, or in any of the annexes thereto or in any other article, section, or annex of the treaty of peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratification or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (articles 387 to 427, inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

14. Until Part I, being the covenant of the League of Nations, shall be so amended as to provide that the United States shall be entitled to cast a number of votes equal to that which any member of the league and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast, the United States assumes no obligation to be bound except in cases where Congress has previously given its consent, by any election, decision, report, or finding

of the council or assembly in which any member of the league and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote.

The United States assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the league if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

15. In consenting to the ratification of the treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations.

Upon roll call there were 49 yeas and 35 nays, and the resolution, not having received the affirmative votes of two-thirds of the Senators present, was not agreed to and the Senate did not advise and consent to the ratification of the treaty of peace with Germany.

As stated above, the Senators were divided generally into three groups, namely, those who opposed the ratification of the treaty, those who advocated the ratification of the treaty either unqualifiedly or with "interpretative reservations," and those who favored substantial reservations. In voting upon the reservations adopted, the treaty opponents invariably voted for the reservations and then voted against the ratification of the treaty. On the other hand, the treaty advocates generally voted against the reservations and after they had been adopted, voted against the resolutions of ratification of which the reservations formed a part. The third group, namely, the reservationists, with one or two exceptions, voted throughout in favor of the reservations adopted and also in favor of the resolutions of ratification.

ANALYSIS OF VOTES ON RESERVATIONS AND RATIFICATIONS

The following table shows how the vote varied on the reservations adopted and on the resolutions of final ratification. The Senators opposed to the ratification of the treaty have been denominated "opponents"; those in favor of unqualified ratification or ratification with interpretative reservations are included under "advocates";

while those in favor of substantial reservations have been called "reservationists":

	November, 1919		March, 1920	
	Yeas	Nays	Yeas	Nays
Preamble:				
Opponents	15	..		
Advocates .....	..	38	<i>Viva voce</i>	
Reservationists	33	2		
	<hr/> 48	<hr/> 40		
Reservation No. 1:				
Opponents	15	..	10	..
Advocates	1	35	6	20
Reservationists	34	..	29	..
	<hr/> 50	<hr/> 35	<hr/> 45	<hr/> 20
Reservation No. 2:				
Opponents	13	..	12	..
Advocates .....	..	33	9	26
Reservationists	33	..	35	..
	<hr/> 46	<hr/> 33	<hr/> 56	<hr/> 26
Reservation No. 3:				
Opponents	14	..	9	..
Advocates	4	31	26	4
Reservationists	34	..	33	..
	<hr/> 52	<hr/> 31	<hr/> 68	<hr/> 4
Reservation No. 4:				
Opponents	15	..	12	..
Advocates	5	36	10	25
Reservationists	39	..	34	..
	<hr/> 59	<hr/> 36	<hr/> 56	<hr/> 25
Reservation No. 5:				
Opponents	12	..	11	..
Advocates	5	34	13	22
Reservationists	38	..	34	..
	<hr/> 55	<hr/> 34	<hr/> 58	<hr/> 22
Reservation No. 6:				
Opponents	14	..	11	..
Advocates	1	39	6	21
Reservationists	38	2	31	..
	<hr/> 53	<hr/> 41	<hr/> 48	<hr/> 21
Reservation No. 7:				
Opponents	14	..	11	..
Advocates .....	..	40	13	14
Reservationists	39	..	31	..
	<hr/> 53	<hr/> 40	<hr/> 55	<hr/> 14
Reservation No. 8:				
Opponents	14	..	9	..
Advocates .....	..	40	2	22
Reservationists	40	..	30	..
	<hr/> 54	<hr/> 40	<hr/> 41	<hr/> 22

	November, 1919		March, 1920	
	Years	Nays	Years	Nays
Reservation No. 9:				
Opponents	14	..	12	..
Advocates	1	39	4	25
Reservationists	41	..	30	..
	<hr/>	<hr/>	<hr/>	<hr/>
	56	39	46	25
Reservation No. 10:				
Opponents	15	..	12	..
Advocates	2	39	5	26
Reservationists	39	..	32	..
	<hr/>	<hr/>	<hr/>	<hr/>
	56	39	49	26
Reservation No. 11:				
Opponents	15	..	11	..
Advocates .....	..	41	2	28
Reservationists	38	..	31	..
	<hr/>	<hr/>	<hr/>	<hr/>
	53	41	44	28
Reservation No. 12:				
Opponents	15	..	10	..
Advocates .....	..	40	5	27
Reservationists	37	1	30	..
	<hr/>	<hr/>	<hr/>	<hr/>
	52	41	45	27
Reservation No. 13:				
Opponents	14	..	11	..
Advocates	3	35	3	27
Reservationists	37	..	30	..
	<hr/>	<hr/>	<hr/>	<hr/>
	54	35	44	27
Reservation No. 14:				
Opponents	14	..	12	..
Advocates	3	37	12	20
Reservationists	38	1	33	..
	<hr/>	<hr/>	<hr/>	<hr/>
	55	38	57	20
Reservation No. 15:				
Opponents .....	..	..	9	..
Advocates .....	..	..	17	15
Reservationists .....	..	..	12	21
	<hr/>	<hr/>	<hr/>	<hr/>
	..	..	38	36
Ratification with reservations:				
Opponents .....	..	14	..	13
Advocates .....	..	41	17	22
Reservationists	39	..	32	..
	<hr/>	<hr/>	<hr/>	<hr/>
	39	55	49	35
Unqualified Ratification:				
Opponents .....	..	14	..	..
Advocates	37	2	..	..
Reservationists	1	37	..	..
	<hr/>	<hr/>	<hr/>	<hr/>
	38	53	..	..

The reasons of the treaty opponents in voting for the reservations and then against the ratification of the treaty were typically stated by Senators Knox and Brandegee before the vote on November 19. Mr. Knox said:

I voted for the reservations because I wanted to make the treaty as little harmful and as little obnoxious to our Constitution and the spirit and institutions of my country as it was possible, keeping in view the temper of the committee and the temper of the Senate. But, Mr. President, while these reservations have been helpful in that direction, in my deliberate judgment, formed after the most careful and painstaking study of this instrument, a study undertaken with no original attitude of unfriendliness toward it, as it stands with these reservations it is my judgment that it imposes obligations upon the United States which under our Constitution cannot be imposed by the treaty-making power. It delegates powers and functions to an extraneous body of such a nature that only the people of the United States by an amendment to the Constitution could confer.²²

Senator Brandegee then explained his vote as follows:

I have voted for these reservations because if by any chance the United States should have to join this league, I wanted the United States of America to be protected as well as it could be under the circumstances. But I would not vote for a league of nations based upon the principle that this league is based upon, with all the reservations that the wit of man could devise, because it would not be safe for my country.

Mr. President, I would cheerfully and happily vote for any association of nations designed to promote the development of international law, to agree upon an international code to govern the relations of nations with each other, and for a great international court composed of men of recognized learning in international law, competent, educated, experienced, the elect of the nations, and for that great international court to promulgate its judgment according to a code agreed upon and acknowledged. I think nations could safely submit their cases to such an elevated tribunal.²³

The reasons of the advocates of the treaty in voting against the resolutions of ratification may probably best be taken from a letter written by President Wilson to Senator Hitchcock on November 18, in which he said that, in his opinion, the resolution containing the reservations adopted by the Senate "does not provide for ratification but, rather, for the nullification of the treaty." He added: "I sin-

²² Congressional Record, Nov. 19, 1919, p. 8768.

²³ *Ibid.*, p. 8775.

cerely hope that the friends and supporters of the treaty will vote against the Lodge resolution of ratification. I understand that the door will probably then be open for a genuine resolution of ratification." ²⁴

RETURN OF THE TREATY TO THE PRESIDENT

After finally voting upon the treaty on March 19, 1920, the Senate adopted a resolution by a vote of 47 yeas to 37 nays, instructing the secretary of the Senate to return the treaty to the President and inform him that the Senate has failed to ratify it, being unable to obtain the constitutional majority therefor.

²⁴ Congressional Record, Nov. 19, 1919, p. 8768.

EDITORIAL COMMENT

THE MONROE DOCTRINE AND THE LEAGUE OF NATIONS

The Monroe Doctrine has long waited in vain for definition and for recognition. Under pressure of necessity certain European nations have conceded its existence, but they have never given it their approval. On the contrary, they have always studiously evaded any declarations either as to its purpose or validity.

Nor have the American people, though fervently and instinctively loyal to this fundamental tenet of foreign policy, been able to agree on a comprehensive definition of the Doctrine.

President Wilson brought into high relief the value of this policy when he characterized the great object of the war just ended as an attempt to create a Monroe Doctrine for the whole world. He also admitted the difficulty of defining this beneficent principle which has been of such value to the nations of this hemisphere as to warrant its extension to all nations. Speaking in behalf of the League of Nations at Spokane, Washington, on September 12, 1919, President Wilson stated:

I did try while I was in Paris to define the Monroe Doctrine, and get it written into the document, but I will confide to you in confidence that when I tried to define it I found that it escaped analysis; that all that you could say was that it was a principle with regard to the interference of foreign powers in the politics of the Western Hemisphere which the United States felt at liberty to apply in any circumstances where it thought it pertinent. That is not a definition. That means that the United States means to play big brother to the Western Hemisphere in any circumstances where it thinks it wise to play big brother. Therefore, inasmuch as you could not, or would not, define the Monroe Doctrine—at least I would not, because I do not know how much we may want to extend it—what more could you say than that nothing in the instrument shall impair the validity of the Monroe Doctrine?

Speaking again on the same subject at Portland, Oregon, on September 25th, President Wilson more explicitly defined the Monroe Doctrine as follows:

What is the Monroe Doctrine? The Monroe Doctrine is that no nation shall come to the Western Hemisphere and try to establish its power or interfere

with the self-government of the peoples of this hemisphere; that no power shall extend its governing and controlling influence in any form to either of the Americas.

In an earlier speech before the Pan-American Scientific Congress in Washington, January 6, 1916, President Wilson affirmed most emphatically that "The Monroe Doctrine was proclaimed by the United States on her own authority, and always will be maintained upon her own responsibility."

Mr. Root, former Secretary of State, also stated in an address before the American Society of International Law on April 14, 1914: "Since the Monroe Doctrine is based on the nation's right of self-protection, it cannot be transmuted into a joint or common declaration by American States or any number of them."

As a warning against European intervention on this hemisphere, as an assertion solely of American foreign policy, and as an intimation of the right and the obligation of intervention by the United States in the affairs of the nations south of the Rio Grande, it is not to be wondered at that the Monroe Doctrine has never been adequately defined, or explicitly recognized either by Europe or by the other American nations. As President Wilson has stated, it escapes analysis.

The wording of Article 21 of the Covenant of the League of Nations is therefore of especial interest and warrants close scrutiny:

Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine, securing the maintenance of peace.

This constitutes neither a definition nor a recognition. The allusion to the Doctrine as a "regional understanding" conveys little, inasmuch as this novel term itself requires definition, particularly if it should imply such special agreements as between England and France concerning the Near East, or between Japan and other Powers concerning the Far East. Such a characterization could hardly be accepted either as clear or adequate.

Other provisions of the Covenant seem to afford the utmost liberty to any member of the League to raise any question "affecting the peace of the world." This would imply that at any moment a member of the League might insist that a given dispute in which the United States was an interested party in no way involved the Monroe Doctrine. In fact, competency to determine whether or not such a ques-

tion might affect the validity of the Doctrine would seem, under the terms of the Covenant, to lie solely with the League itself.

Furthermore, the recognized antagonism of some of the other American nations towards the Monroe Doctrine as an expression of American foreign policy would seem likely to give rise to a most embarrassing situation at any moment in the heart of the League itself.

It is also of peculiar interest to notice the phraseology of Article 21 in coupling with this statement concerning the Monroe Doctrine the other affirmation that: "Nothing shall be deemed to affect the validity of international engagements such as treaties of arbitration . . ." The reason for this strange phraseology is not apparent, unless it should advert to the fact that the United States, by various treaties of arbitration still in force, has agreed to arbitrate without reserve all questions of whatever nature, including, naturally, the Monroe Doctrine itself! This fact has been frequently emphasized by special advocates of the League as showing that the United States has already abandoned the Monroe Doctrine.

Leaving aside all questions of partizanship, whether personal or political, the proposed Senate reservation to Article 21 may be regarded as having considerable basis both in reason and in consistent practice:

The United States will not submit to arbitration or to inquiry by the assembly or by the Council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long established policy commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

Here again is no attempt to define the Doctrine, but a warning that the United States completely reserves freedom of action either as to its interpretation or practical application. Under this reservation a member of the League will be precluded from raising any question which the United States may choose to regard as involving in any way this fundamental declaration of American foreign policy.

It is a matter of great regret that, owing to the disinclination of the United States to restrict its own freedom of action under the Doctrine, no general recognition or approval of this declaration on

the part of all the nations of this hemisphere has been possible. It should be acknowledged, of course, that every nation necessarily reserves to itself liberty of action in certain situations of a near neighborhood concern, such as confronts the United States on its Mexican frontier. The right to "abate a nuisance" must always exist where no other adequate or immediate remedy exists. But we should not confuse questions of this character with the Monroe Doctrine itself, which is much more comprehensive in scope.

Considered in its most general aspect, the Doctrine is intended to provide on this hemisphere a sanction for the fundamental rights of international law, namely, the rights of existence and of independence. The United States, of course, has always been the champion as well as the protagonist of this great idea. But there should be no inherent logical difficulty in converting this declaration of rights into a Pan-American declaration. It is not inconceivable that the other nations of this continent might be willing to give a generous recognition to the pre-eminent rôle of the United States in the vigilant assertion and defence of these basic rights of nations.

The precise *modus operandi* in every case arising under a Pan-American doctrine might readily present diplomatic complications of a delicate nature. Complications are bound to arise in any event; but the situation created by the League of Nations would seem to demand that the American nations should themselves first come to an understanding concerning their special and *regional* interests before they commit themselves to a large undertaking likely to create further friction and still greater embarrassments.

PHILIP MARSHALL BROWN.

THE INTERNATIONAL RED CROSS ORGANIZATION

Although primarily it is the duty and responsibility of a nation, through its official authorities, to safeguard the health and physical well-being of its own people, nevertheless there has always been an opportunity and need for voluntary agencies to supplement and contribute to the usefulness of the official agencies charged with these responsibilities in every country. Furthermore, the support of an enlightened public opinion is indispensable.

Just as there has always been need in time of war for the assistance of the National Red Cross organizations as an auxiliary force for supplementing the work of the responsible authorities of their respective nations in caring for the wounded and the sick, and in looking after the comfort and welfare of the fighting forces, so also there has always been need in time of peace as well as in time of war for the assistance of voluntary organizations in supplementing the work of the national authorities in performing the like services for the civilian population of their respective nations.

So again in the wider field of international action it has been found essential in time of war to give effect to the humane provisions of the Geneva Convention of 1906 for the amelioration of the condition of the wounded and sick of the fighting forces, by utilizing the voluntary and unofficial agency of the International Committee of the Red Cross at Geneva. That Committee by reason of its impartial neutrality and splendid record of helpfulness in war service has been welcomed by all belligerent nations as the approved medium of communication between belligerent enemies, not only for the voluntary relief work carried on by the National Red Cross organizations, but also for the official work undertaken by the belligerent governments themselves for the relief of prisoners of war and the fulfilment generally of the requirements of that convention.

So, likewise, in the field of international relief work in time of peace it has become increasingly evident that in consequence of the unhealthy physical and living conditions of many of the people of the world, and in recognition of the principle that the betterment of the health and well-being of mankind is a matter which concerns all nations and is essential to the full enjoyment of the blessings of peace, there is urgent and immediate need for all the remedial and preventive work in this field that can be supplied, both by official and volunteer organizations, in addition to the emergency work hitherto undertaken of mitigating the suffering resulting from famine, fire, flood and similar calamities.

Here again the service demanded comes especially within the scope of the Red Cross principle of serving humanity, supported by the enlightened spirit of self-sacrifice and human sympathy, which was so widely stimulated by the war that it attained something of the moral force of an organized religion. The enlistment of the same voluntary effort in the service of humanity in every country is needed

in time of peace fully as much as in time of war, and, in order that the great resources and strength of the vast organizations which the National Red Cross societies had developed during the war should be preserved and utilized in time of peace for carrying on the Red Cross movement, the new international Red Cross organization was established while the peace negotiations were in progress in Paris last year.

The name of this new organization is the League of Red Cross Societies, and its articles of association were adopted on May 5, 1919. The articles of association state that:

It is contemplated that this League will work in complete accord and co-operation with the International Committee [at Geneva], that by supplementing the war-time activity of the International Committee, with an intelligent peace-time program it will prove a natural complement to the International Committee, that this co-operation will in due time lead to an organic union with the International Committee, whose continuing functions are essential to the world, and that as a result of this combined effort the best traditions of the Red Cross will be maintained and made of ever-widening usefulness to the peoples of the world.

The articles further provide that the League shall be non-political, non-governmental, and non-sectarian, and its objects are stated to be:

(1) To encourage and promote in every country in the world the establishment and development of a duly authorized voluntary national Red Cross organization, having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world, and to secure the coöperation of such organizations for these purposes. (2) To promote the welfare of mankind by furnishing a medium for bringing within the reach of all the peoples the benefits to be derived from present known facts and new contributions to science and medical knowledge and their application. (3) To furnish a medium for co-ordinating relief work in case of great national or international calamities.

The original members of the League are the American, British, French, Italian and Japanese National Red Cross Societies, which are described in the articles of association as the founder members. Any other Red Cross society which pursues the objects of the League and is authorized in conformity with the principles of the International Committee of the Red Cross at Geneva and is duly authorized by the government of the country in which it is situated, is eligible for admission to the League.

The membership of the League already comprises the National

Red Cross Societies of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, Czecho-Slovakia, Denmark, France, Great Britain, Greece, Holland, India, Italy, Japan, New Zealand, Norway, Peru, Poland, Portugal, Roumania, Serbia, South Africa, Spain, Sweden, Switzerland, the United States of America, Uruguay and Venezuela.

Each member of the League reserves to itself entire freedom of action at all times with reference to its own policies and activities, and any member of the League is at liberty to withdraw from the League at any time by giving written notice.

The control of the affairs of the League is vested in a General Council and a Board of Governors.

The General Council of the League consists of representatives of all the National Red Cross organizations which are members of the League.

The Board of Governors consists of not more than fifteen members, each of whom is appointed by a National Red Cross organization, and two *ex-officio* members, who are respectively the Director General and Secretary General of the League.

The American, British, French, Italian and Japanese National Red Cross organizations as founder members of the League are each entitled permanently to appoint one member of the Board. The original members appointed by these organizations to constitute the Board of Governors upon the organization of the society were: Mr. Henry P. Davison, Chairman, representing the American Red Cross, Sir Arthur Stanley, representing the British Red Cross, Count Jean de Kergorlay, representing the French Red Cross, Count Giuseppe Frascara, representing the Italian Red Cross, and Prof. Dr. Arata Ninagawa, representing the Japanese Red Cross.

The national organizations authorized to appoint the other members of the Board are designated by the General Council, half of the number being designated every two years, and each national organization so designated being entitled during a period of four years to appoint one member of the Board.

No authority rests in the League to obligate any member in any manner whatsoever, unless such member has previously authorized the Board of Governors in writing to incur such obligation.

In order to give this new organization an international status and sanction, the Peace Conference at Paris, at the suggestion of the organizers of the League of Red Cross Societies, inserted in the

Covenant of the League of Nations the following provision which appears as Article XXV thereof:

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

The first meeting of the General Council of the League of Red Cross Societies was held at Geneva in March of this year.

CHANDLER P. ANDERSON.

THE MEETING OF THE AMERICAN BAR ASSOCIATION

The annual meeting of the American Bar Association was held at Boston in the first week of September last. The session was of interest in many ways and the attendance unusually large and representative. Lord Finlay, sometime Lord Chancellor, was the distinguished representative of Great Britain present, and Mr. Justice Riddell of the Supreme Court of Ontario was heard with attentive appreciation. It is necessary here, however, to confine ourselves to that portion of the proceedings having to do with international law.

First, the Standing Committee on International Law presented a report covering twenty-two printed pages. It briefly outlined the negotiations which resulted in the armistice between the Allied and Associated Powers and the Central Powers. It submitted an abbreviated summary of the peace treaty, spoken of as the Treaty of Versailles. It called attention to the division of opinion concerning it which had arisen and which tended toward party lines. It mentioned that the President had promised full explanations and deprecated untimely discussion (the report was filed by requirement in June) and it added: "The vast scope of the matters, the inconclusive state of the documents, the limits of publicity not wholly removed, and the request of the President, make it improper for your committee to do more than summarize the situation without assuming to express a conclusion or advise action."

The committee, however, expressed the ardent hope that the interests of the world in a stable peace might be reconciled with the security of the sovereignty and independence of the United States.

They called attention to the fact that this independence was declared in 1776 and had been maintained by six generations of our countrymen in glory and honor, unshaken and undiminished. In conclusion, they said: "May our generation, whose energy, courage, capacity and patriotic devotion, this great combat has tried and approved, may our generation hand on its heritage to those who come after, still unabated, undiminished, constant and secure."

They appended a "Table of Events" directly affecting our country in international matters during the year, with dates and references. This recorded one hundred and forty-two occurrences and covered seventeen printed pages.

This writer is advised by Lord Bryce, who has warmly commended these compilations, of a project in England to arrange for like annual reports by British students of international law.

The report was signed by Professor Theodore S. Woolsey, Professor Charles Cheney Hyde, Mr. Frederic R. Coudert and the writer. Dr. James Brown Scott, the only other member of the committee, was prevented from participating by absence in attendance at the Peace Conference.

A special committee of the Bar, appointed to report on a League of Nations, not to the Bar Association, but to the Executive Committee, made public in print a divided report of some sixty-four pages. The majority of the committee, consisting of Mr. William H. Wadhams, the late Mr. Frederick N. Judson, and Mr. Edgar A. Bancroft, presented an extended argument in favor of the League of Nations, taking the ground that its ratification involved no surrender of sovereignty on the part of this country. They recommended therefore its ratification without amendment and they declared reservations which made changes were in effect amendments.

Mr. Henry St. George Tucker, former president of the American Bar, and Mr. Charles Blood Smith, the other two members of this special committee, declined in writing to concur in the foregoing report.

Upon the divided report no action whatever was taken by the Association. Printed copies were sent by the Secretary of the Bar to each member of the Foreign Affairs Committee of the United States Senate endorsed as follows:

The within report of the Special Committee having been submitted too late for consideration, it was referred by the Executive Committee to the American Bar

Association itself without recommendation. The report has not yet been considered by the Association.

A statement was widely circulated through the press of the country that the American Bar Association had declared in favor of the League of Nations. It is respectfully submitted that the statement was erroneous and wholly without warrant in fact.

Two addresses of interest as to international questions, one by Honorable David Jayne Hill on "The Nations and the Law," and the other by Honorable Robert Lansing on "Some Legal Questions of the Peace Conference," require mention.

Mr. Hill supported, with wide learning and eloquent comment, the passion for justice according to law which was the chief support of civilization. He quoted President Wilson's words to show that we accepted the challenge of Germany in defense of our rights upon the seas under international law, which no modern publicist had ever questioned before. He called attention, however, to the fact that in the fourteen conditions of peace proposed by the President, there is "no reference to international law as having been violated, or as something to be vindicated and reestablished."

He said in the proposal of a League of Nations the restoration of the law of nations was not included among the five objects to be obtained in the peace. He pressed the desirability of having it understood that the United States had taken up arms solely to vindicate the law. He complained that the Covenant of the League of Nations contained no declaration that sovereign states as such possess any rights whatever. "We find," he says, "no provision of law by which their conduct to one another may be judged; no promise of a court before which their wrongs may be brought and their legal rights judicially determined."

He said, on the other hand, "matters of vital, material consequence are to be entrusted to the purely diplomatic decisions of the Council or the Assembly," and that "these bodies, not regulated by any law or rules of procedure, are charged with judicial functions"; that the Covenant not only makes no advance in international law, but wholly overlooks the status attained by it through the work of the great international congresses since the Congress of Vienna of 1815.

He added:

We have founded this nation upon principles of law, and upon the guarantees of individual rights under the law. That is our great contribution to civilization;

and if we are to be of use to other nations, old or new, our first thought must be to remain our own masters, to preserve our independence, to control our own forces as a nation by our own laws and to protect from any form of detraction that heritage of organized liberty which has given us peace at home and prestige abroad.

Honorable Robert Lansing, in a thoughtful and far-reaching address which was printed in full in our last number, attributed most of the criticism of the conclusions of the peace conference to "incomplete knowledge." He said that the war had given an impetus to internationalism, or what was more properly called "Mundanism"; that this was the enemy of nationalism which is the basis of world order as we know it. He had no doubt the final verdict would be for nationalism in democratic form. He said the treaty of peace made the nation the unit of responsibility and so showed the nationalistic idea was to be preserved; that this showed further that international law, and not world law affecting individuals, is to continue as the standard of intercourse between governments and peoples.

He insisted on one principle for the direction of international intercourse, and that was justice in the restricted sense of legal and not abstract justice. He declared that, when you go beyond that you enter the field of diplomacy, where concession and compromise are the chief agents; that in judicial settlement all nations are held equal, but inequality is recognized in diplomacy. He therefore appealed for the establishment of an international tribunal of justice, with the Hague Court as a foundation, and for the draft of a simple and concise body of legal principles to be there applied.

Mr. Lansing said that he presided over the Commission on Responsibilities, constituted by the Conference, and this had to consider what action should be taken against individuals responsible for the war and for violations of the laws of war. The trial of the Kaiser was especially considered. While the report of the Commission¹ declared that all "without distinction of rank, including Chiefs of States, who have been guilty of offenses against the laws and customs of war or the laws of humanity, are liable to criminal prosecution," Mr. Lansing said that to this the American members dissented on the ground, among others, that it submitted Chiefs of States to a degree of responsibility hitherto unknown to municipal or international law, and that the American representatives refused also to

¹ Printed in full herein, p. 95.

fully assent to the recommendation for the creation of a High International Court of Criminal Jurisdiction with authority to interpret and apply the law of humanity. Mr. Lansing expressed the belief that the provisions adopted by the Council of Four, for the arraignment and trial of the former German Emperor, create "not a court of legal justice, but rather an instrument of political power which is to consider the case from the viewpoint of high policy and to fix the penalty accordingly."

Mr. Lansing vigorously urged the maintenance of individualism between nations and within nations, declaring it the very life blood of modern civilization. He said, in closing:

If we Americans abandon individualism, we have bartered away our birthright, we have cast aside that for which our forefathers were willing to die. The same is true of individualism among nations. It must be maintained if the peoples of the earth are to possess patriotism, love of liberty, and that generous devotion to national ideals which have made nations great and prosperous.

Much that transpired at this great meeting was of legal and intellectual interest. Its omission here is solely due to the limits appropriate to a publication confined to international law.

CHARLES NOBLE GREGORY.

JURISDICTION OF LOCAL COURTS TO TRY ENEMY PERSONS FOR WAR CRIMES

Supplementing the literature which appeared in periodicals during the war on the competence of local courts to try and punish enemy persons for what are regarded as crimes against the recognized laws and customs of civilized warfare, it will be of interest to leave the forum of academic discussion of conflicting theories and systems of jurisprudence, and enter the realm of actually ascertained and applied law on the subject.

In the United States the principle that local courts have no jurisdiction to try a punishable crime committed by members of the invading army, either during or after the enemy occupation, has been declared by the Supreme Court to be a principle of international law. After the Civil War in the United States, the Supreme Court was called upon to decide a number of cases involving the criminal and civil responsibility of members of the respective military forces

committed during the occupation or invasion of the territory of the other. In deciding these cases the court regarded the States in insurrection against the United States as enemy territory and the people residing therein as enemies, for all purposes connected with the prosecution of the war, and it adopted the principles of public law applicable in international wars. The court found that in the interest of humanity and to prevent the cruelties of reprisals and retaliation, the Confederate Army was conceded such belligerent rights as belong under the laws of nations to the armies of independent governments engaged in war against each other, which concession placed the soldiers and officers of the rebel army as to all matters directly connected with the mode of prosecuting the war on the footing of those engaged in lawful war, and exempting them from liability for acts of legitimate warfare. (*Ford v. Surget*, 1878, 97 U. S. 605.)

The question of the jurisdiction of local courts to try individual members of the enemy forces for war crimes came squarely before the Supreme Court in the case of *Coleman v. Tennessee* (1878), (97 U. S. 509). The facts in that case were briefly as follows: During the military occupation of East Tennessee by the Federal Army, a soldier belonging to that army murdered a woman, for which crime he was tried, convicted and sentenced to death by a Federal court-martial. The sentence, however, for some cause unknown was not carried into effect. After the constitutional relations of Tennessee to the Union were restored, the soldier was indicted in a Tennessee State court for the same murder, tried, convicted and again sentenced to death. The case was brought before the Supreme Court of the United States on a writ of error upon the ground that the conviction by court-martial constituted former jeopardy. The Supreme Court held that such a plea was not proper because it admitted the jurisdiction of the Tennessee court to try the offense, and the judgment was set aside and the indictment quashed for the express reason that the State court had no jurisdiction. The pertinent portions of the opinion of the court, delivered by Mr. Justice Field, follow:

The doctrine of international law on the effect of military occupation of enemy's territory upon its former laws is well established. . . . The right to govern the territory of the enemy during its military occupation is one of the incidents of war, being a consequence of its acquisition; and the character and form of the government to be established depend entirely upon the laws of the conquering State or the orders of its military commander. By such occupation the political relations between the people of the hostile country and their former

government or sovereign are for the time severed; but the municipal laws . . . remain in full force, so far as they affect the inhabitants of the country among themselves. . . . This doctrine does not affect, in any respect, the exclusive character of the jurisdiction of the military tribunals over the officers and soldiers of the army of the United States in Tennessee during the war; for, as already said, they were not subject to the laws nor amenable to the tribunals of the hostile country. The laws of the State for the punishment of crime were continued in force only for the protection and benefit of its own people.

The judgment and conviction in the criminal court should have been set aside and the indictment quashed for want of jurisdiction. Their effect was to defeat an act done, under the authority of the United States, by a tribunal of officers appointed under the law enacted for the government and regulation of the army in time of war, and whilst that army was in a hostile and conquered State. The judgment of that tribunal at the time it was rendered, as well as the person of the defendant, were beyond the control of the State of Tennessee. The authority of the United States was then sovereign and their jurisdiction exclusive. Nothing which has since occurred has diminished that authority or impaired the efficacy of that judgment.

In thus holding, we do not call in question the correctness of the general doctrine asserted by the Supreme Court of Tennessee that the same act may, in some instances, be an offence against two governments, and that the transgressor may be held liable to punishment by both when the punishment is of such a character that it can be twice inflicted, or by either of the two governments if the punishment, from its nature, can be only once suffered. It may well be that the satisfaction which the transgressor makes for the violated law of the United States is no atonement for the violated law of Tennessee. But here there is no case presented for the application of the doctrine. The laws of Tennessee with regard to offences and their punishment, which were allowed to remain in force during its military occupation, did not apply to the defendant, as he was at the time a soldier in the army of the United States and subject to the articles of war. He was responsible for his conduct to the laws of his own government only as enforced by the commander of its army in that State, without whose consent he could not even go beyond its lines. Had he been caught by the forces of the enemy, after committing the offence, he might have been subjected to a summary trial and punishment by order of their commander; and there would have been no just ground of complaint, for the marauder and the assassin are not protected by any usages of civilized warfare. But the courts of the State, whose regular government was superseded, and whose laws were tolerated from motives of convenience, were without jurisdiction to deal with him.

In the following year the Supreme Court was called upon to decide a case involving a civil suit instituted in a local court of New Orleans by a citizen of New York against General Dow, an officer of the Army of the United States, for plundering the dwelling house and planta-

tion of the plaintiff in Louisiana, which act the petition characterized as "illegal, wanton, oppressive and unjustifiable." The plaintiff further alleged that the act had been perpetrated by officers and soldiers acting under General Dow's secret orders "unauthorized by his superiors, or by any provision of martial-law, or by any requirements of necessity growing out of a state of war." (*Dow v. Johnson*, 100 U. S. 158.) The Supreme Court upheld General Dow in his refusal to submit to the jurisdiction of the New Orleans court. The court reiterated the doctrine laid down in *Coleman v. Tennessee*, adding that the position of the invading belligerent is not affected or his relation to the local tribunals changed by his temporary occupation of the enemy's country, and held as follows:

When, therefore, our armies marched into the country which acknowledged the authority of the Confederate government, that is, into the enemy's country, their officers and soldiers were not subject to its laws, nor amenable to its tribunals for their acts. They were subject only to their own government, and only by its laws, administered by its authority, could they be called to account. . . . There would be something singularly absurd in permitting an officer or soldier of an invading army to be tried by his enemy, whose country it had invaded. The same reasons for his exemption from criminal prosecution apply to civil proceedings. There would be as much incongruity, and as little likelihood of freedom from the irritations of the war, in civil as in criminal proceedings prosecuted during its continuance. In both instances, from the very nature of war, the tribunals of the enemy must be without jurisdiction to sit in judgment upon the military conduct of the officers and soldiers of the invading army.

This doctrine of non-liability to the tribunals of the invaded country for acts of warfare is as applicable to members of the Confederate army, when in Pennsylvania, as to members of the National army when in the insurgent States. The officers or soldiers of neither army could be called to account civilly or criminally in those tribunals for such acts, whether those acts resulted in the destruction of property or the destruction of life; nor could they be required by those tribunals to explain or justify their conduct upon any averment of the injured party that the acts complained of were unauthorized by the necessities of war.

If guilty of wanton cruelty to persons, or of unnecessary spoliation of property, or of other acts not authorized by the laws of war, they may be tried and punished by the military tribunals. They are amenable to no other tribunal, except that of public opinion, which, it is to be hoped, will always brand with infamy all who authorize or sanction acts of cruelty and oppression.

The question here is, What is the law which governs an army invading an enemy's country? It is not the civil law of the invaded country; it is not the

civil law of the conquering country; it is military law—the law of war—and its supremacy for the protection of the officers and soldiers of the army, when in service in the field in the enemy's country, is as essential to the efficiency of the army as the supremacy of the civil law at home, and, in time of peace, is essential to the preservation of liberty.

Ten years later the same court, in the case of *Freeland v. Williams* (131 U. S. 405), had occasion to apply these principles in a case which involved the validity of a judgment rendered on December 22, 1865, in a local court of West Virginia, in favor of the plaintiff in an action of trespass *de bonis asportatis* for the taking and conversion of cattle in that state by a Confederate soldier during the Civil War. The defense upon the merits of the case was that the property had been taken by the soldiery and military authorities of the Confederacy, in whose armies the plaintiff served, and that the acts complained of were "done according to the usages of civilized warfare and in the progress of said war." The plaintiff denied that the cattle had been taken "in accordance with the usages of civilized warfare." The court below took testimony by way of depositions on the issue as to whether the taking was an exercise of belligerent rights and was done according to the usages and principles of public war. From this testimony it found that the defendant was a soldier under the command of General Fitzhugh Lee, whose force was dominant in that part of West Virginia in January, 1864, and that it was under his orders that the cattle were seized while Lee was on his raid through that county.

The case, therefore, presented the counterpart of the case of *Dow v. Johnson*. In the *Dow* case a court of an invaded country had attempted during the enemy occupation to assume jurisdiction of an act committed by members of the occupying forces, while in the *Freeland* case a court of the victor claimed jurisdiction after the enemy had been repelled for an act committed by a member of the expelled enemy forces.

Mr. Justice Miller reaffirmed the doctrine of *Dow v. Johnson* in the following language:

Ever since the case of *Dow v. Johnson*, 100 U. S. 158, the doctrine has been settled in the courts, that in our late civil war each party was entitled to the benefit of belligerent rights, as in the case of public war, and that, for an act done in accordance with the usages of civilized warfare, under and by military authority of either party, no civil liability attached to the officers or soldiers who acted under such authority. (131 U. S., 416.)

He held that the case as presented to the Supreme Court showed that the original judgment was rendered on account of acts done in pursuance of the powers of a belligerent in time of war, that, when the original action was presented to the West Virginia court and the thing complained of was found to be an act in accordance with the usages of civilized war, during the existence of a war flagrant in that part of the country, that court should have proceeded no further and its subsequent proceedings may be held to have been without authority of law.

In these cases, the highest judicial authority in the United States has declared it to be a principle of public international law that the local territorial courts have no jurisdiction to try enemy persons for acts committed during and as a part of belligerent operations, even although such acts be acknowledged war crimes or are alleged to have been committed in violation of the laws of war. The principle has been consistently followed throughout a variety of changing conditions: (1) where a recognized war crime was committed in occupied territory and the local court secured jurisdiction of the offender after the occupation had ceased; (2) where the local court in occupied territory attempted to take jurisdiction of an alleged violation of the laws of war during the period of enemy occupation; and (3) where the alleged violation of the laws of war was committed during an enemy raid and the local court subsequently obtained jurisdiction of the person of one of the members of the raiding party.

GEO. A. FINCH.

IN MEMORIAM—THOMAS JOSEPH LAWRENCE.

1849-1920

In the leading case of *Triquet v. Bath* (3 Burrow, 1478, 1481) decided in 1764, Lord Chief Justice Mansfield quotes Lord Chancellor Talbot as holding in *Buvot v. Barbut*, decided in 1736, and in which Mansfield had been counsel,

That the law of nations, in its full extent, was part of the law of England. . . . That the law of nations was to be collected from the practice of different nations, and the authority of writers. Accordingly, he argued, and determined

from such instances, and the authority of Grotius, Barbeyrac, Binkershoek, Wiquefort, etc., there being no English writer of eminence, upon the subject.

This state of affairs is fortunately long since passed, and their Lordships, were they living today, would have considered the late Dr. Lawrence as an "English writer of eminence upon the subject."

The principal works of Dr. Lawrence dealing with international law or international relations were: *Essays on Some Disputed Questions in Modern International Law*, 1884, second edition 1885, published when he was Deputy Whewell Professor of International Law in the University of Cambridge; a little *Handbook of Public International Law* issued a year later, which has run through many editions; *The Principles of International Law*, first published in 1895 after two years spent at the University of Chicago as Professor of International Law; *War and Neutrality in the Far East*, published in 1904 as the result of the Russo-Japanese War; *International Problems and Hague Conferences*, 1908, issued shortly after the adjournment of the Second Hague Peace Conference; *Documents Illustrative of International Law*, published in the year of the war and whose preface bears the ominous date of July 28, 1914; *The Society of Nations*, 1918, and finally, *Lectures on the League of Nations*, delivered, as were the contents of the previous volume, at the University of Bristol, which institution he honored as Reader in International Law. He had previously for many years been Lecturer on International Law at the Royal Naval College at Greenwich and at the Royal Naval War College at Portsmouth. For many years he was likewise an associate of the Institute of International Law, and from 1908 until his death a member of that learned society.

It would be an exaggeration perhaps to state that Dr. Lawrence's first work, the *Essays on Modern International Law*, was his greatest. It is, however, a fact that the views he there expressed he maintained and restated at lesser or greater length in his subsequent publications when he had occasion to refer to such matters, and it is also true that these views are as timely today as when they were first expressed. For example, among the seven essays of which that little volume consists may be mentioned the following: "Is there a True International Law?" "The Work of Grotius as a Reformer of International Law," "The Primacy of the Great Powers" and "The Evolution of Peace."

The first he answers in the affirmative, defining law not in the

narrow sense of a law set by a superior to an inferior, but as "A rule of conduct actually observed among men." As the rules forming the body of international law are "observed among men" to quote his own language, "they are *laws*; being set by the consent of nations, they are *international laws*." If they are laws, they will be observed and the Society of Nations will in the long run see to it that they are observed.

In considering the work of Grotius, Dr. Lawrence calls attention to a condition of affairs at the end of the Thirty Years' War which in many respects is not unlike that obtaining at the end of the present war,—a situation of which Grotius said, and which he gave as the incentive for the composition of his work:

I saw prevailing throughout the Christian world a license in making war, of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason, and when arms were once taken up all reverence for divine and human law was thrown away, just as if men were henceforth authorized to commit all crimes without restraint.

This state of affairs Dr. Lawrence considered as "the natural result of the principles of Machiavelli applied in the field as well as in the cabinet."

For the lawless, Grotius insisted upon a law of nature, everywhere existing, common to all, and of superior authority. The acceptance of his declaration by the nations at large supplied a standard by which the acts of nations could be tested and their conduct controlled. The belief in natural law has passed away, but the publicists of the future can hope to accomplish the same results as Grotius if they advocate as he, a principle everywhere existing, common to all, and of superior authority. This principle is justice.

The "Primacy of the Great Powers" was a fixed idea with Dr. Lawrence, just as the juridical equality of nations is an obsession of the present writer. Dr. Lawrence proclaimed the primacy of the Great Powers, that is the inequality of nations, in the *Essays*, his first publication; he restated it in the *Principles*; and he insists upon it in the *Society of Nations*, the last work we have from his pen, to which he gave definite and final form. Thus in the *Essays* he said:

It is not merely that the stronger states have influence proportionate to their strength; but that custom has given them what can hardly be distinguished from a legal right to settle certain questions as they please, the smaller states being obliged to acquiesce in their decisions.

In the *Principles* he says that an examination of modern international history points "to a primacy on the part of the foremost Powers of the civilized world," and in the *Society of Nations* he speaks of "the fanatics of state equality, the publicists who would rather see right and justice assassinated in the international forum than secured by according legal recognition to the differences in power and influence which exist among the states of the civilized world." It may be permissible to express doubt whether the little states at the recent Peace Conference at Paris were sufficiently impressed with the wisdom and justice of the principal Allied and Associated Powers as to recognize their primacy and to place their destinies in the hands of their representatives. "Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is as much a sovereign state as the most powerful kingdom." It is believed that the correct doctrine was laid down in this extract from Vattel, whose day as a publicist is not yet run.

The last of the *Essays* to be considered is that devoted to the "Evolution of Peace," a subject which lay near his heart, which directed if it did not control his thought, and which colors his writings when they are not specifically devoted to the means of its realization. The greatest forces in modern life he stated in this remarkable essay to be "Commerce, Democracy and Christianity," and he declared them to be "ranged together on the side of peace." These ideas he expressed a little more at length yet still briefly as follows:

Commerce flourishes most where there is the most perfect security; and the participation of the people in the business of government puts the power of vetoing war into the hands of those who suffer most by it. Thus an incidental effect of the extension of commerce and the growth of democracy has been to strengthen the pacific sentiments of civilized men. But in addition to these forces the main object of which is not peace, but in the first case the production of wealth, and in the second the increase of political liberty, there is also a potent cause which operates directly and immediately to restrain the warlike passions of human nature. I refer to the application of Christian morality to international transactions.

Appealing to history, he traces the steps by which our ancestors renounced private warfare, for he was of the opinion—and rightly—that what smaller groups had done, the larger groups which we call States could do:

Looking back on the record of human progress, we can see that the passions of early man were so strong, and his reason so weak, that nothing but the wild

justice of revenge would satisfy him. We trace the gradual rise of state authority, as organization proved to be a mighty power in the struggle for existence. We observe how that authority first sought to regulate the use of force in private feuds, and then provided an alternative in the tribunals which it established and armed with coercive power. The next step shows us the survival of the fittest in the increase of the authority of the courts of law, and the decay of private war. At last civilisation banishes the vendetta altogether, and civilised man regards it as a mark of barbarism, when he observes it in less advanced communities.

Turning to public war, he says:

Just as in the first stage of the history of private war the passions of the injured individual were the measure of the severity of the punishment, so in the corresponding stage of the history of public war the passions of the conquering tribe are the measure of the atrocities they inflict upon the vanquished.

The analogy however does not stop here:

In the second stage the resemblance between the history of public and private war is as complete as in the first. . . . In the accounts of international struggles we trace the gradual growth of a body of customary rules, which curb the ferocity of combatants, and introduce mercy and good faith into a sphere of conduct from which they had before been absent. The tacit consent of civilised states takes the place of the public opinion of the community.

In like manner nations have resorted to arbitration and have provided temporary tribunals, just as in Dr. Lawrence's third stage "the state provided tribunals to which injured persons could resort for justice, instead of endeavouring to redress their own wrongs," and in this remarkable little essay he felt and stated that the nations had entered upon the fourth state, for he notes that "we have begun to regard international conflicts as barbarous." Thirty-four years later, recurring to this phase of the subject, he said:

For some time past we have lived under an international order corresponding roughly to the internal order which subsisted for centuries within the older State communities. Courts were gradually established to try disputes between individuals and inflict punishment for crime, while the old right of private vengeance was not at first absolutely abolished, but allowed only under strict regulations. Similarly nations have had their Arbitral Tribunals, and have resorted to them with increasing frequency; but they have not yet given up the right of making war at their own will and pleasure, though in waging it they have accepted more or less completely certain restraints which are embodied in what we call the laws of war. The Society of Nations is now in the same condition as the Society of Individuals was in England in the time of Alfred the Great, who provided in his Dooms that the kindred of a murdered man

should wait for seven days before they attempted to slay the murderer, and if he consented within that time to make the money compensation which was the legal satisfaction for his crime, he was not to be attacked at all. In other words, it is just beginning to emerge from barbarism. But as individuals were in time completely converted to orderly ways, and consented to laws which made penal that resort to the blood feud which was once the proud privilege of every free-man, so it may come to pass that states shall soon agree to put under a ban as enemies of the common weal those of their number who resort to war instead of to international Courts of Arbitration or Committees of Conciliation. There is nothing utopian in the suggestion. If acted on, it would but carry one step further a process of evolution which has been worked out already in its earlier stages in close resemblance to the historical development of civilised society within progressive states.

And Dr. Lawrence thus stated his final conclusions in the *Society of Nations*, written in the last year of the war, the preface of which is dated six weeks before the armistice with Germany:

We have now seen that there are four needs, the satisfaction of which civilised mankind should insist upon in any scheme for the creation of a new and better international order whether by means of a League of Nations or in some other way. They are first the provision of Arbitral Courts to deal with cases susceptible of judicial treatment; secondly, the establishment of Conciliation Committees for the settlement of cases not capable of legal adjustment; thirdly, the organisation of an international force to be used in the last resort for the purpose of compelling recalcitrant states to submit to the decisions of these Tribunals and Committees, and fourthly, the proportional and simultaneous disarmament of all civilised powers, saving only the forces necessary to safeguard the social fabric. The first of these can be satisfied by carrying a little further the plans already formulated and in part put into working order by The Hague Conferences of 1899 and 1907. The second could be met by the drastic reform and vigorous development of the system of the Concert of Europe and the World-Concert which has had a rudimentary and precarious existence for several generations. In dealing with the third we may obtain valuable hints from the few occasions when an international force was used to bring pressure to bear on a state which defied the Concert of Europe. As to the fourth there are no precedents; but proposals pointing to partial disarmament have been made by responsible rulers on several occasions, and as late as 1907 the Second Hague Conference passed unanimously a resolution to the effect that the serious examination by the powers of the question of the restriction of military charges was eminently desirable. All these are directly concerned with the organisation and work of the League.

But in addition it will be necessary to make provision for the revision of its activities from time to time, and also for the improvement and extension of the International Law under which it must live and which its Courts will have to administer. For this something in the nature of a Legislative Assembly will be required; and the nations already possess the germ of one in the Hague

Conference. Many reforms are needed both in its constitution and in its procedure. But it has not to be created. There it stands, ready for adjustment to the needs of the new epoch.

It is evident that in the course of his busy life of three score years and ten, Dr. Lawrence published many well-known and valuable contributions to international law, of which he was an acknowledged master, although by profession he was a clergyman of the Established Church of England,—a fact which militated against his preferment, inasmuch as some churchmen of influence were inclined to consider him as merely an international lawyer and some laymen of influence to regard him as primarily a churchman. His language was at times calculated to offend both classes, as when, for example, he called the writer's attention to a room in a deanery in England in which "His Majesty George the Third was first graciously pleased to go mad."

JAMES BROWN SCOTT.

PROFESSOR OPPENHEIM

The death of Professor Oppenheim, Whewell Professor of International Law at Cambridge University, occurred after a brief illness on October 7, 1919.

His eminence as a teacher, scholar and writer in international law is such as to call for mention in this JOURNAL of his services and achievements.

Lassa Francis Lawrence Oppenheim was born March 30, 1858, being a son of Aaron Oppenheim, of Frankfort-on-Main. He was educated in the local lycée and at the universities of Göttingen, Heidelberg, Berlin and Leipsig. After serving as lecturer and extraordinary professor at Freiberg and professor at Basle, and publishing several legal works in both Germany and Switzerland, he removed from Basle to London, and in 1905 became lecturer on international law in the London School of Economics. Abandoning all other branches, he devoted himself to a profound and exclusive study of the literature of international law in many languages.

He produced the first volume of his comprehensive "International Law" as to Peace in 1905. A year later this was followed by his second volume as to "War and Neutrality." Both were published by Longmans, Green and Company.

As the *Cambridge Review* for November pointed out:

No complete treatise on the law of nations had been written in England since W. E. Hall's book in 1880. That had been through many editions, but Hall died in 1894, and, while much of his work was for all time, other parts had been rendered inadequate by the course of events. John Westlake, then Whewell Professor, had just published a volume on "Peace," but it was, like an earlier volume, a series of chapters rather than a treatise. Dr. Oppenheim's book immediately caught the eye of international lawyers, who admired the comprehensive treatment, the remarkable depth of research, the close and masterful exposition and the keen power of judgment which marked the pages.

It points out that other English writers on this subject had relied on English and American precedents, disregarding the continental practice. Oppenheim's continental training enabled him to "strike a balance between the Anglo-American and the continental schools" in a way which found general acceptance.

His work served as a guide to the periodical literature on the subject in all languages as well as a clear, animated and comprehensive treatise. It assured his reputation, and, in 1908, he succeeded to the Whewell Professorship in International Law at Cambridge University on its resignation by the venerable Professor Westlake.

He edited the collected papers of Westlake on International Law, contributed a volume on the Panama Canal Conflict, one on the "Science of International Law" and another on "International Incidents for Discussion in Conversation Classes," and wrote for various periodicals. In 1911 he brought out a new edition of his main work, largely rewritten, and this takes its place as a leading authority throughout the world.

Oppenheim addressed himself to his professorial duties with great zeal and devotion. He built for himself a house at Cambridge, which he called Whewell House, and there he exercised a wide, constant and cordial hospitality, especially to lawyers who shared his fervid interest in international law. He had acquired British citizenship in 1900 and married in 1902 an English lady, Elizabeth Alexander, daughter of Lt. Col. Phineas Cowan, and became thoroughly English in feeling. In the great war he stood loyally by his adopted country and sharply attacked the German practices.

Jointly with Colonel Edmonds he prepared for the British Government "An Exposition of the Laws and Usages of War on Land for the Guidance of Officers of His Majesty's Army," which both

English courts and diplomats quoted and relied upon. By reason of his continental reputation he was of great value in supplementing the English views. At the end of the war he published three lectures on the League of Nations, which, with various other publications, he generously sent this writer, and was at work on a new volume of "Contributions to International Law and Diplomacy" up to his last illness. He was also preparing a new edition of his great treatise. It was intended to apply the lessons of the great war to the promotion of peace. He found the task overwhelming, and in July his health seriously declined. August and September were spent in Wales and he was thought improved though not well. The end came suddenly October 7th.

He impressed his associates with his industry and learning and his marked powers of discrimination, and, beyond these, by a generous and untiring devotion to the cause of international law, sustained by patience and enthusiasm. He was helpful to all who came to him and his services were zealous and never perfunctory. His warm response to others commanded their enduring friendship in return. The *Cambridge Review*, to which I am indebted for much concerning Professor Oppenheim, thinks that he "became perhaps the greatest authority of his generation upon the law of nations." Having regard to the breadth of his view and the comprehensive character of his great treatise, it seems difficult to name any contemporary writer for whom a higher rank can be claimed.

Dr. Oppenheim was made an Associate of the Institute of International Law in 1908 and attained the honor of full membership in 1911. He became an honorary member of the *Real Academia de Jurisprudencia* of Madrid in 1912, and a corresponding member of the American Institute of International Law in 1916.

His exertions for his students and his helpfulness to all fellow scholars endeared him greatly to a wide and international circle. His death terminates a correspondence and interchange of publications which, for this writer, had always been an inspiration and delight. May those of us who are attached to the same great branch of knowledge emulate his noble and intellectual zeal, his hospitable and humane spirit, even if we cannot attain to learning of such extended scope and varied comprehension as he brought to the service of us all. His mind, so richly stored with both continental and Anglo-American thought and precedents, was peculiarly equipped to be of

service at the present time, and his untimely loss must therefore be doubly deplored. The eminent publicist, Dr. A. Pearce Higgins, has been chosen to fill the chair at Cambridge vacated by his death.

CHARLES NOBLE GREGORY.

THE SOLUTION OF THE SPITSBERGEN QUESTION

In the early part of the present year, representatives of the United States, Great Britain, Denmark, France, Italy, Japan, Norway, the Netherlands and Sweden signed at Paris a treaty relating to Spitsbergen. This action doubtless almost brought to a final solution certain questions discussed by the Honorable Robert Lansing in this JOURNAL in the number for October, 1917, as "A Unique International Problem." Under the provisions of this agreement the contracting parties recognize the sovereignty of Norway over the archipelago of Spitsbergen, including Bear Island, which has for centuries been in the anomalous situation of being *terra nullius*.

The Government of Norway being particularly interested in an early international understanding respecting the archipelago, and being of the opinion that the Peace Conference at Paris afforded an opportune occasion for dealing with this question, requested the Conference to consider it. Action was taken in accordance with the desire of the Norwegian Government on the initiative of the five Powers designated in the treaties of peace as the "Five Principal Allied and Associated Powers." The complete success of such action was assured by the friendly coöperation of certain interested neutral nations, namely, Denmark, the Netherlands and Sweden. These nations, which were not represented at the Peace Conference, were invited to offer suggestions. The fact that such suggestions as they saw fit to present were accepted doubtless in some measure accounts for the considerable length of a treaty which is concerned with comparatively few important subjects.

An attempt to solve the Spitsbergen question was made in the year 1914 at an international conference at Christiania, called by the Government of Norway, which was attended by representatives of Germany, the United States, Denmark, France, Great Britain, Norway, the Netherlands, Russia and Sweden. The conference in its endeavor to frame an administration for the archipelago, to preserve

order and to define the relative rights of persons therein resident, proceeded on the understanding, which had been accepted by the countries represented, that the islands should remain *terra nullius*. A basis for the establishment of such an administration would have been found in the authority which nations are conceded to have over their nationals wherever they may be. And the affairs of the necessary governmental machinery would have been conducted by the several governments acting in concert through joint agencies.

The treaty which the conference attempted to draft, and which it as a matter of fact almost completed, embraced a comprehensive scheme of civil and criminal jurisprudence; and provision was made for a recognition of the rights of persons who had asserted claims to lands in the islands and for the adjustment of differences growing out of conflicting claims to the same territory. Underlying this unique scheme of government were many finely spun theories—some of them doubtless a bit too fine. Its practical operation would probably have been fraught with many difficulties. And it is obviously fortunate that a more practicable solution has been found.

The Government of the United States, having no political interest in the archipelago, participated in the conference solely with a view to the protection of rather extensive American mining interests therein. It was interested in bringing about international recognition of the inviolability of private rights in the islands and in securing the establishment of an administration thereover under which such rights would be safeguarded.

The commission which framed the treaty recently signed at Paris discarded previously considered schemes of an international administration or of a mandatory government. Political considerations affecting this relatively unimportant territory which had previously necessitated the consideration of somewhat fantastic plans did not stand in the way of a practical solution of the question which has frequently in the past been the cause of international complications. It was deemed unnecessary to take into account ancient claims of certain governments which had never been perfected and accorded international recognition. An understanding was readily reached among interested nations to recognize the sovereignty of Norway in view of the interests of that country in Spitsbergen, its proximity to the archipelago and the desirability of an early definitive solution.

Former proposals with regard to an international administration

having been discarded, it was of course proper that the incorporation into the treaty of stipulations which would in effect result in a limited sovereignty being vested in Norway should be avoided. And certain provisions in the treaty which define the rights of nationals of the contracting parties in the islands are apparently not at variance with that idea. These provisions may be said to fall into two general classes.

Following the first article of the treaty in which the contracting parties recognize the full sovereignty of Norway over the archipelago, there is a series of provisions which may be said to be in the nature of such as are found in the so-called treaties of commerce and navigation, securing to nationals of contracting parties equality in matters relating to commerce and industry.

An annex to the treaty contains provisions in respect of rights acquired in the islands prior to the signing of the treaty. These provisions embody a definitive recognition of private rights and an equitable and efficient procedure for the adjustment of conflicting claims to lands in the archipelago.

Claims that do not conflict will be passed upon in the first instance by a single "Commissioner." The Norwegian Government undertakes to confer a title on persons whose claims shall be recognized by the Commissioner. When undisputed claims shall have been disposed of, the more difficult question of conflicting claims will be taken up by this Commissioner acting in conjunction with other Commissioners designated by interested governments, that is, governments whose nationals have claims to land in the archipelago. The Norwegian Government will confer title on persons whose claims shall be recognized by the tribunal of commissioners.

In this annex to the treaty is found an interesting and important precedent. Of course, it cannot be regarded as a precedent of importance in its possible future application to private rights in lands having the status of *terra nullius*. But it is important to the persons who have been the pioneers in the development of the natural resources of Spitsbergen. The provisions of the annex properly accord international recognition to rights which have heretofore been legally undefined, since, of course, claimants to land in a *terra nullius* could have no title under municipal laws where such laws did not exist, and since such rights were evidently not defined by any generally recognized principle of international law. Norway as the future

sovereign authority in the archipelago, is obligated to give effect by appropriate municipal enactment to such international recognition of private rights.

The treaty contains provisions to enable non-signatory Powers to give adherence thereto, and provisions for the protection of the interests of Russian nationals until the recognition by the contracting parties of a Russian Government permits Russia to adhere to the treaty.

FRED K. NIELSEN.

SELF-DETERMINATION IN CENTRAL EUROPE

The "right of self-determination" has never been clearly defined, nor have rules been formulated for the practical application of this fundamental principle of international law and order.

It is true that there was a qualification of this right in President Wilson's statement "that all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world." Unfortunately, there is room for controversy as to what constitutes "*well-defined* national aspirations," and as to just what "elements" may create or perpetuate "discord and antagonism." Each claimant for recognition naturally believes his aspirations are well defined, and resents the idea that anybody else should exercise for him his own right of self-determination. Among these "nations crowding to be born" are Egypt, Arabia, Syria, Armenia, Azerbaijan, Kurdistan, Ukrainia, Latvia and Esthonia.

As a matter of fact, infelicitous experimentations in self-determination by the Peace Conference have revealed some of the serious limitations to this principle. First of all, it is plain, as set forth in the Covenant of the League of Nations, that there are backward peoples in so primitive a stage of development as to render them as incapable of national existence as a child is incapable of legal or moral responsibility. The status of such peoples—whether they shall be governed absolutely or be conceded some degree of self-government—cannot be determined by themselves.

Secondly, there is a logical limitation on the right of a minority

to assert selfishly a right of self-determination in opposition to larger and possibly more vital interests. The Civil War was fought to deny the right of self-determination on the part of the Confederacy as against the necessity of preserving the Union for the welfare of all. The nationalistic claims of a small municipality like Fiume cannot possibly be permitted to stand in the way of the immensely more important interests of the great *hinterland* that is directly dependent on this port.

Thirdly, in the case of conflicting interests, the economic interest in particular, it is most difficult either to determine all the factors involved, or to present them so clearly and simply as to permit the peoples immediately concerned to vote intelligently on the momentous issues which may be at stake. There are states which have grown up out of so-called historic wrongs, and have acquired so definite a national unity as to render dismemberment quite unreasonable. States are not mere agglomerations of peoples and appurtenant territories; they are living, political organisms, possessing alimentary and circulatory systems, with nerves and essential vital organs.

Fourthly, if a plebiscite is to be had, it is not at all easy to find a proper territorial basis without danger of a political gerrymander that may work grave injustice. If a race is in a minority, how shall it be permitted to vote? As a separate unit? Or in districts where it begins to assert a bare majority? Or in districts where it enjoys a marked predominance? Shall such a vote be determinative, or merely a courteous consultation? Answers to these questions are most difficult. One becomes aware of the fact that in some instances it is quite impossible to disentangle races, and realizes that the proposal of theorists to redraw political frontiers in accordance with a color scheme based on the alleged ethnic distribution of peoples is as dangerous as it is fantastic.

Fifthly, in any attempt to satisfy "the well-defined national aspirations" of a given people—say of the Roumanians in Transylvania—it is obvious that a considerable racial minority must always be left united with another race. The question then becomes an embarrassing one: whether it is more just to leave Hungarians and Saxons under Roumanian rule, or Roumanians under the domination of Magyars and Saxons. The answer, naturally, cannot be left with safety solely to the peoples concerned, especially when they are artificially stimulated to a consciousness of grievances and race an-

tagonisms. There must be a consultation of neighbors and disinterested friends to act as a *compositeur aimable*.

In view of these limitations on the right of self-determination, it is clear that where independence is not feasible, the best that can be conceded is a large measure of local autonomy, together with adequate guarantees for freedom of communication with neighboring peoples with whom may exist cultural or economic affiliations. In fact, it is becoming increasingly evident that national independence itself is a poor thing unless coupled with guarantees of freedom of intercourse. Access must be had to raw products, special markets, and to convenient outlets such, for example, as Danzig for the Poles, Hamburg for the Czechs, and Fiume for both the Jugo-Slavs and the Hungarians. In our preoccupation concerning nationalistic claims, we have unfortunately ignored the economic foundations of a durable peace.

The tasks of the Peace Conference was admittedly Titanic. With the sincere intention of meting out that "impartial justice" that involves "no discrimination between those to whom we wish to be just and those to whom we do not wish to be just," it was impossible to satisfy the high hopes of those idealists who have believed that the time had arrived for the organization of international society on a sound and permanent basis. And it is naturally hard for such persons to recognize even the possibility that the Peace Conference could fail to achieve a "peace of healing," a "peace of justice."

In the case of Austria-Hungary, not only is it evident that the Peace Conference failed to define the right of self-determination, or to provide rules for its practical application, but, worse still, it is evident that there was no united purpose to mete out "a justice that knows no standard but the equal rights of the several peoples concerned." The dominant motives of the Peace Conference would seem to have been: first, to gratify faithful allies; secondly, to show severity to the conquered foe; and, thirdly, to establish a new balance of power.

The main features of the peace settlement in Central Europe are as follows: The Czechs, the loyal and valiant allies of the "Allied and Associated Powers," have been given three million people of German stock who are violently opposed to this union. They have also taken into partnership their Slavic cousins, the Slovaks, along with rich territory essential to Hungary, though it is by no means

established that these cousins have desired complete incorporation with the Czechs. The Russenes—those half-million "Little Russians" on the Hungarian side of the Carpathians—have been allocated to the Czechs, though their economic interests would more naturally cause them to gravitate toward the Magyars. And Czecho-Slovakia has also been given a frontage on the Danube in the Hungarian city of Pressburg, and the Grosser Schutz Insel, inhabited by a vast majority of Magyars. Nor does the young Republic of Czecho-Slovakia begin its career auspiciously with its neighbor Poland, both of whom have a bone of contention in Teschen and upper Silesia.

In the case of the new Austrian Republic, not only have the three million people of German stock already referred to been denied union with their brothers in Austria, but all Austrians have been expressly denied the right to unite with all other Germans, except by the formal permission of the League of Nations! Furthermore, the German Tyrol south of the Brenner Pass—that playground and historic homeland so full of tender sentiment for all Austrians—has been given to Italy. It is true that a small section of West-Hungary inhabited by a few German-speaking peoples has been assigned to Austria, but this may prove a doubtful gain if it should acerbate relations with Hungary. As constituted by the Treaty of St. Germain, Austria is so reduced in population and economic resources, so hopeless of a national future, that she now remains a proud beggar requiring both food and justice. Her situation is nothing short of tragic.

And the situation of Hungary is even more tragic. Its losses to the Czechs, the Roumanians, and the Serbs mean, first of all, that several million Magyars—possibly six millions—and other peoples of German stock, have passed under the yoke of foreign rule; and, secondly, that Hungary is so despoiled of varied resources, including coal, iron, oil, and forests, as to be practically incapable of an independent national existence. Possessing a well-defined historic unity, despite its racial divergencies, and blessed with a splendid economic life, Hungary now finds itself so dismembered and mutilated as to be quite unable to function properly as a living, political organism.

The Viennese have a saying that "The East begins at the River Leitha." The Peace Conference, however, by its decisions has brought the Balkans to the Rhine. A new Macedonia has been created in Central Europe, with racial antagonisms and grievances that render

peace impossible. Furthermore, by failing to extend a generous hand to the struggling young democracies of both Austria and Hungary, the Peace Conference has encouraged internal political disintegration as well as external. Hungary was driven into the hands of the Bolsheviks and then back to the monarchists, while Austria under Socialist rule has had a desperate time avoiding a similar fate.

A situation has been brought about of an unsound and unreal character which ignores the fundamental fact that no peace is of any avail which is not based on the frank and friendly realization of the mutual interests and needs of the peoples immediately concerned. They alone are competent to settle among themselves complicated questions of neighborhood interest.

This fact was realized by some men of vision at the Peace Conference, notably General Smuts, who urged that before final decisions were reached concerning Central Europe, representatives of all the former portions of the old Austro-Hungarian Empire should be summoned together to determine their mutual interests and needs. Except by the recognition of the Czecho-Slovaks as deserving allies, the Peace Conference ignored the wishes and the vital interests of the peoples of Central Europe.

The attitude of many that the League of Nations must be entrusted with the duty of rectifying the mistakes of the Peace Conference would seem either Quixotic or the counsel of desperation. To establish a definite *status quo* by treaty under solemn guarantees, and at the same time seek to revise such a settlement, would seem utterly incongruous and preposterous. To saddle the League of Nations with any responsibility for the lamentable situation in Central Europe would be a burden beyond its power to bear.

The only hope in such an apparently hopeless condition of affairs lies in the inexorable necessity which must compel the peoples of the old Austro-Hungarian Empire sooner or later to disregard all artificial and arbitrary arrangements, and to establish a genuine *modus vivendi* based on the recognition of their mutual needs and aspirations. Some sort of a confederacy of the peoples already drawn together by the Danube would seem to be a logical necessity.

Freedom, prosperity and happiness are to be found only in common consent, not in coercion. In self-determination of this character will be found the peace of the whole world, as well as of Central Europe.

PHILIP MARSHALL BROWN.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletin, bulletin, bolletino; *B. Rel. Est.*, Boletin de Relaciones Exteriores; *P. A. U.*, bulletin of the Pan-American Union, Washington; *Cmd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Prive, Paris; *Cur. Hist.*—Current History—A Monthly Magazine of the New York Times; *Cong. Rec.*, Congressional Record; *Doc. dipl.*, France, Documents diplomatiques; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémorial diplomatique, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista, revue, rivista; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

March, 1919.

8—April 24. JAMAICA—PANAMA. Parcel post convention signed. *P. A. U.*, 49: 596.

31 ECUADOR—JAPAN. Exchange of ratifications of the treaty of friendship, commerce and navigation. *P. A. U.*, 49: 597.

June, 1919.

9 COLOMBIA—ECUADOR. Boundary treaty signed. *P. A. U.*, 49: 349.

20 SPAIN—UNITED KINGDOM. Treaty respecting extradition between certain British protected states in the Malay Peninsula and Spain, signed at Madrid, June 20, 1919. Ratified Nov. 22, 1919. *G. B. Treaty Series*, 1919, No. 16.

23 PARAGUAY—SPAIN. Extradition treaty concluded in Asuncion. *P. A. U.*, 49: 728.

24 SPAIN—ECUADOR. Extradition treaty signed. *P. A. U.*, 49: 349.

July, 1919.

2 BRAZIL—URUGUAY. Boundary treaty signed. *P. A. U.*, 49: 349.

- 29 ITALY—UNITED STATES. Convention extending for another period of five years the arbitration convention of March 28, 1908, ratified by the President. *P. A. U.*, 49: 473.

August, 1919.

- 9 GREAT BRITAIN—PERSIA. Agreements signed at Tehran relative to customs-tariff, loans and indemnity. *Cmd.*, Persia No. 1 (1919).
- 11–November 22. GREAT BRITAIN. Edward, Prince of Wales, visited Canada and the United States. *Cur. Hist.*, 11 (Pt. 1): 433.

August, 1919.

- 11 URUGUAY—UNITED STATES. Commercial travelers' convention proclaimed. *U. S. Treaty Series*, No. 640.
- 25 NETHERLANDS—UNITED STATES. Arbitration agreement extending the duration of the convention of May 2, 1908, proclaimed. *U. S. Treaty Series*, No. 641.
- 27 BRAZIL—URUGUAY. Government authorized municipal authorities to carry out the agreement signed May 1, 1918, regarding navigation of the River Jaguarao. *P. A. U.*, 49: 596.
- 27 GUATEMALA—UNITED STATES. Commercial travelers' convention proclaimed. *U. S. Treaty Series*, No. 642.

September, 1919.

- 2 AUSTRIA. Supreme Council replies to Austrian request for modification of economic terms. *Times*, September 3, 1919.
- 2 NEW ZEALAND. Peace treaty ratified by both houses. *Times*, Sept. 3, Oct. 11, 1919.
- 2 SIAM ratified the peace treaty. *N. Y. Times*, Jan. 4, 1920.
- 2 GREAT BRITAIN—UNITED STATES. Treaty for protection of salmon of Fraser River system signed at Washington. *Cong. Rec.*, Jan. 17, 1920.

Sept. 3—Jan. 10, 1920. GERMANY. Note on sinking of German ships at Scapa Flow June 22, 1919, sent to Supreme Council. Previous note from Germany was received on June 28, in answer to note from Supreme Council dated June 24, 1919. On Nov. 6, the Supreme Council sent a protocol to Germany and on Nov. 22, a further note. On Nov. 24, Germany replied and

on Nov. 27, Baron von Lersner offered in a memorandum to submit the question to arbitration. On Dec. 1, there was a verbal communication by von Lersner. On Dec. 8, the Supreme Council sent an ultimatum to Germany, with draft copy of a treaty and protocol. On Dec. 30, Baron von Lersner announced that Germany would sign the treaty and protocol and would exchange ratifications of the German peace treaty on Jan. 6, 1920. Ratifications were exchanged Jan. 10, 1920. *Times*, Nov. 8, Dec. 24, 1919; *N. Y. Tribune*, Dec. 24, 1919; *N. Y. Times*, Dec. 27, 1919; *N. Y. Sun*, Dec. 31, 1919.

- 4-11 CANADA. Parliament ratified Peace Treaty. *Times*, Oct. 11, 1919.

- 5 ROUMANIA. The Supreme Council sent note to Roumania relative to signing the Austrian peace treaty, the minorities treaty and the evacuation of Hungary. On Sept. 24, Roumania replied as to evacuation of Budapest. *N. Y. Times*, Sept. 25, 1919. Further notes sent by Council Oct. 12, Nov. 3 and 7. On Nov. 11, Roumania issued a proclamation announcing the evacuation of Budapest, occupied since August 3. The evacuation was carried out on Nov. 13. On Dec. 3, the Supreme Council sent an ultimatum to Roumania, expiring on Dec. 8. On Dec. 9, Roumania signed the peace treaty with Austria and with Bulgaria, as well as the general treaty guaranteeing the rights of minorities. *Times*, Nov. 12, 14, 1919; *N. Y. World*, Nov. 27, 1919; *N. Y. Times*, Dec. 10, 11, 1919.

- 10 ARMS AND AMMUNITION. Convention and protocol between Allied Governments for control of trade in arms and ammunition signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 12.

- 10 AUSTRIA. Austrian delegates signed peace treaty. *Times*, Sept. 11, 1919. Text: Supplement to this JOURNAL, p. 1.

- 10 AUSTRIA-HUNGARY. Agreement between Allied and Associated Powers with regard to cost of liberation of the territories of the former Austro-Hungarian Monarchy, signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 14.

- 10 BOLIVIA—BRAZIL. Brazilian Congress approved the treaty of extradition concluded June 3, 1919. *P. A. U.*, 49: 596.

- 10 CONGO ACT. Convention revising the General Act of Berlin, 1885, and the General Act and Declaration of Brussels, 1890, signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 18.
- 10 CZECHO-SLOVAKIA—ALLIED GOVERNMENTS. Treaty defining boundaries of Czecho-Slovakia signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 30.
- 10 ITALIAN REPARATION PAYMENTS. Agreement between Allied and Associated Powers regarding, signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 15.
- 10 LIQUOR TRAFFIC. Convention regulating importation of liquors into Africa, signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 19.
- 10 SERB-CROAT-SLOVENE STATE. Treaty with principal Allied and Associated Powers signed at Saint-Germain-en-Laye. *G. B. Treaty Series*, 1919, No. 17.
- 10-12 SOUTH AFRICA. Parliament ratified peace treaty. *Times*, Oct. 11, 1919.
- 13-Dec. 30. FIUME. Capt. Gabriele D'Annunzio entered Fiume at head of several thousand Italian irregular soldiers and assumed control of the Port. Sept. 22, he announced a state of war with Yugoslavia. On Oct. 18, it was announced that Peace Conference would allow Italy and Yugoslavia to settle Fiume question. Nov. 24, United States rejected Fiume concessions to Italy. *N. Y. Times*, Oct. 1 and Nov. 25, 1919.
- 15 ICELAND. Danish legation at Berne notified the Swiss Government of the adhesion of Iceland to certain acts of the postal convention of May 26, 1906. *J. O.*, Jan. 8, 1920.
- 16-24. CHINA. Presidential mandate issued declaring war with Germany at an end. *Times*, Sept. 20, 25, 1919.
- 16 SYRIA. Announced that an agreement had been reached by France and Great Britain relative to Syria. Text: *Cur. Hist.*, 11 (Pt. 1): 339. *Le Temps*, Sept. 16, 1919.
- 19-Oct. 2. AUSTRALIA. Parliament ratified peace treaty. *Times*, Oct. 11, 1919.
- 19 BULGARIA. Draft peace treaty handed Bulgarian delegates in Paris. Text: *Times*, Sept. 20, 1919. Nov. 27, Bulgaria signed the treaty. *Times*, Nov. 28, 1919.
- 19 BELGIUM—SWITZERLAND. Commercial agreement signed. *Times*, Sept. 12, 1919.

- 19 URUGUAY. Peace treaty with Germany and its annexed protocol approved. *P. A. U.*, Jan., 1920.
- 21 SPAIN—PERU. Spain recognized the government of President Leguia as *de facto* government of Peru. *Times*, Sept. 22, 1919.
- 22 GERMANY. German representatives signed at Versailles the protocol annulling provisions of German Constitution in opposition to the terms of the peace treaty, particularly par. 2 of Art. 61 which provided for Austrian representation in the German Parliament. *Temps*, Sept. 24, 1919.
- 23 BESSARABIA—ROUMANIA. Bessarabia sent to President Wilson an appeal for relief from methods employed by Roumania to obtain permanent possession of Bessarabia. Text: *Cur. Hist.*, 11 (Pt. 1): 293.
- 25 SPITZBERGEN. Supreme Council announces Spitzbergen is awarded to Norway. *N. Y. Tribune*, Sept. 26, 1919. See also this JOURNAL, p. 232.
- 28 LUXEMBURG. Plebiscite on economic and political future retains present dynasty and favors economic alliance with France instead of Belgium. *Times*, Sept. 30, 1919.
- 30 FRANCE—ITALY. Labor Treaty signed providing that the workers of either country, when employed in the other, shall be on the same footing as nationals with respect to labor conditions and shall enjoy the same benefits with reference to relief and social insurance. Text: *Mo. Labor R.*, February, 1920.
- 30 ITALY—GREECE. Announced that railway convention had been signed providing for railway communication between Rome and Athens with a ferry from Otranto to Valova. *Times*, Oct. 1, 1919.

October, 1919.

- 1 POLAND—GERMANY. Treaty signed, providing among other things, amnesty for political offences and the liberation of prisoners of war. Since the peace treaty, this is the first state treaty concluded by either the German or Polish Republics. Prof. Hans Delbruck was appointed German commissioner for the execution and interpretation of the treaty. *Times*, Oct. 3, 6, 1919. Ratified on Oct. 23. *Reichs G.*, 1919, No. 205.

- 1-Nov. 1. BELGIUM. King Albert and Queen Elizabeth landed in New York on Oct. 1. After touring the United States they sailed for home, Nov. 1, 1919. *N. Y. Times*, Oct. 2, Nov. 2, 1919.
- 2 GUATEMALA. Peace treaty ratified by legislature. *N. Y. Times*, Oct. 4, 1919. *P. A. U.*, Jan., 1920.
- 2 UNITED STATES. Senate rejected Fall amendment which would have eliminated the United States from commissions to be created by the peace treaty. *Cong. Rec.*, Oct. 2, 1919. 6673.
- 3 BELGIUM—LUXEMBURG. Belgium breaks off diplomatic relations and recalls her minister—because of the recent vote of the people for financial alliance with France instead of Belgium. *N. Y. Times*, Oct. 4, 1919.
- 3 HAITI—UNITED STATES. Protocol for establishment of a claims commission signed. *U. S. Treaty Series*, No. 643.
- 5 GERMANY. President of German Republic ratified the additional protocol to the revised Berne convention for the protection of literary and artistic works of Nov. 13, 1908. *B. Inst. Intern. Int.*, Jan., 1920, 2: 154.
- 7 DEATH OF PROF. LASSA FRANCIS LAWRENCE OPPENHEIM, Whewell professor of international law at Cambridge since 1908. Born in Germany March 30, 1858, he became a naturalized Englishman in 1900. His best known work is *International Law*, of which a second edition was published in 1912. *Times*, Oct. 9, 1919.
- 7-8 INTERPARLIAMENTARY UNION. Council, composed of two delegates of each of the national groups, met at Geneva, under presidency of Lord Weardale. This was the first meeting since 1914. *Procès-verbaux du Conseil interparlementaire*, X.
- 7 ITALY. King of Italy by royal decree ratified German and Austrian peace treaties. To make the treaty operative it must be approved by Parliament. *Times*, Oct. 8, 1919.
- 8 CZECHO-SLOVAKIA. Swiss Federal Council notified French Government of the adhesion of Czecho-Slovakia to several conventions. *J. O.*, Oct. 8, 1919.
- 10 GREAT BRITAIN. The King signed the peace treaty, the protocol, the agreement concerning the Rhine provinces and the treaty

- with Poland. New Zealand ratified peace treaty Sept. 2; Canada, Sept. 4 and 11; South Africa, Sept. 10 and 12; Australia, Sept. 19 and Oct. 2. *Times*, Oct. 11, 1919.
- 11 FRANCE. Decree issued declaring war at end. *J. O.*, Oct. 13, 1919.
 - 13 ARGENTINA—CHILE. Police and frontier convention concluded in Buenos Aires. *P. A. U.*, Jan. 1920, p. 101.
 - 13 CHILE—ARGENTINE REPUBLIC. Agreement announced for proper police supervision of international boundary. *Times*, Oct. 17; *N. Y. Times*, Oct. 15, 1919. *P. A. U.* (Spanish ed.), 50: 63.
 - 13 CHILE—MEXICO. Mexican Senate approved convention regarding interchange of diplomatic pouches, concluded May 16, 1919. *P. A. U.*, 49: 596.
 - 15 ITALY—UNITED STATES. Agreement extending the duration of the arbitration convention of March 28, 1908, proclaimed. *U. S. Treaty Series*, No. 645.
 - 15 SPAIN—UNITED STATES. Agreement extending the duration of the arbitration convention of April 20, 1908, proclaimed. *U. S. Treaty Series*, No. 644.
 - 15-17 MEXICO—VENEZUELA. Agreement concluded in regard to diplomatic pouches. *P. A. U.*, Jan., 1920.
 - 16-17 UNITED STATES. The Shantung amendment and Fall amendments to peace treaty defeated in United States Senate. *Cong. Rec.*, Oct. 16, 17, 1919.
 - 17 AUSTRIA. Austrian Assembly voted to ratify peace treaty of St. Germain. *N. Y. Times*, Oct. 18, 19, 1919; *Times*, Oct. 20, 1919.
 - 17 BRAZIL—UNITED STATES. Postal money order convention signed. *P. A. U.*, 49: 596.
 - 18 BRAZIL—UNITED STATES. Postal money order convention signed. *N. Y. Times*, Oct. 19, 1919.
 - 19 MEXICO—UNITED STATES. William O. Jenkins, American Consular Agent at Pueblo, Mexico, was kidnapped and ransom demanded. Oct. 26, his release was accomplished by a cash payment, but later he was twice arrested, charged with having conspired in the kidnapping. On Dec. 4, he was set free on bail. Texts of notes exchanged: *Cur. Hist.*, 11 (Pt. 1): 410; *N. Y. Sun*, Nov. 28, 1919; *U. S. Bulletin*, Dec. 8, 1919; *N. Y. Times*, Dec. 1, 6, 19, 1919.
 - 19 NEW ZEALAND. House of Representatives passed bill accepting mandate for Samoa. *N. Y. Times*, Oct. 20, 1919.

- 20 PARAGUAY—UNITED STATES. Convention for development of commerce and to increase exchange of commodities by facilitating work of traveling salesmen, signed. *Cong. Rec.*, Jan. 31, 1920.
- 21 GERMANY—HOLLAND. The Supreme Council addressed a demand to Germany to surrender five merchant ships improperly sold to Holland, which under the armistice convention of Treves, signed Jan. 25, 1919, should have been delivered to the Allies. Text: *Times*, Oct. 23, 1919. Germany replied Nov. 3, Text: *Times*, Nov. 5, 1919. Nov. 4, The Supreme Council advised Holland that it would not recognize the Dutch ownership of German ships purchased after outbreak of war. *Times*, Nov. 4, 1919.
- 21 PARAGUAY—JAPAN. Trade agreement signed. *N. Y. Times*, Oct. 22, 1919.
- 22 AUSTRIA. National Assembly adopts title "Republic of Austria." *N. Y. Times*, Oct. 23, 1919.
- 22-24 INTERNATIONAL TRADE CONFERENCE held in Atlantic City, N. J. *N. Y. Times*, Oct. 20, 30, 1919.
- 23 POLAND—GERMANY. Economic treaty signed. Summary: *Times*, Oct. 24, Nov. 3, 1919.
- 24 BULGARIA. Bulgarian reply to note relative to treaty provisions. *Times*, Oct. 25, 1919. *Cur. Hist.*, 11 (Pt. 1): 398.
- 25 AUSTRIA. President of Austria signs peace treaty of St. Germain. *Times*, Oct. 26, 1919.
- 28-Nov. 6. INTERNATIONAL CONGRESS OF WORKING WOMEN. The first congress held in Washington, D. C., with 31 delegates from 13 countries. *Mo. Labor R.*, Dec., 1919.
- 29-Nov. 29. INTERNATIONAL LABOR CONFERENCE, provided for in labor section of peace treaty held in Washington. Proceedings and draft convention adopted by the conference: *Mo. Labor R.*, Jan.-Feb., 1920.
- 29 POLAND—LETVIA. Premier Paderewski recognized the Lettonian Government. *N. Y. Times*, Oct. 30, 1919.
- 29 UNITED STATES. Senate rejected three amendments calculated to equalize British votes at League Assembly. *Cong. Rec.*, Oct. 29, 1919.
- 29 VATICAN—CZECHO-SLOVAK REPUBLIC. Announced that the Vatican had recognized Czecho-Slovak Republic. *Times*, Oct. 30, Nov. 1, 1919.

- 30 MONGOLIA—CHINA. Outer Mongolia applied to China to be again annexed to that government. *N. Y. Times*, Oct. 31, 1919; *Times*, Nov. 10, 1919. Outer Mongolia was tributary to China from 1691 A.D. to 1915. By a tripartite agreement between Mongolia, Russia and China, signed June 7, 1915, Mongolia became an independent state. See this JOURNAL, 10: 798-808; Supplement to this JOURNAL, 10: 230-257.
- 30 JAPAN. Peace treaty with Germany ratified by Japan. *N. Y. Times*, Oct. 31, 1919.

November, 1919.

- 4 CHILE. Announces adhesion to the League of Nations. *N. Y. Times*, Nov. 5, 1919.
- 4 GREAT BRITAIN—CHILE. Arbitration treaty ratified. *London Ga.*, Nov. 4, 1919.
- 7 PARAGUAY—UNITED STATES. Convention for establishment of an international gold clearance fund between the United States and Paraguay, signed at Asuncion. *P. A. U.* (Spanish ed.), Feb., 1920.
- 7 SWEDEN—REPUBLIC OF AUSTRIA. Sweden recognized the republic of Austria. *Times*, Nov. 8, 1919.
- 9 CZECHO-SLOVAK REPUBLIC. Announced that Czecho-Slovak National Assembly had adopted the German and Austrian treaties. Treaties countersigned by President Masaryk. *Times*, Nov. 10, 13, 1919.
- 10 CHILE. Adhered to German peace treaty. *Times*, Nov. 11, 1919.
- 11 BRAZIL. Chamber of Deputies ratified peace treaty. *Cur. Hist.*, 11 (Pt. 1): 389.
- 11 GREAT BRITAIN—BELGIUM. Agreement signed continuing in force the agreement of April 15, 1919, relative to military penal jurisdiction. *Times*, Nov. 12, 1919.
- 11 ROUMANIA—HUNGARY. Roumania issued proclamation announcing evacuation of Budapest, all troops to be out of city on Nov. 13. *Times*, Nov. 12, 1919.
- 12 COLOMBIA. Announced Congress of Colombia had passed a bill accepting the League of Nations and the same had been signed by the President. *Times*, Nov. 13, 1919.
- 14 PARAGUAY—UNITED STATES. Convention signed for the regulation of exchange. *N. Y. Times*, Nov. 15, 1919.

- 16 BOLIVIA. Ratified peace treaty. *Advocate of Peace*, 88: 339.
- 17 BELGIUM—HOLLAND. Semi-officially announced that an agreement had been reached on question of the Scheldt, under which a commission would be appointed to consist of three Dutch and three Belgian members. In event of differences, each nation will appoint an arbitrator and the League of Nations as chief arbitrator who will have casting vote. *Times*, Nov. 18, 1919.
- 17 PARAGUAY. The Senate approves adhesion to the League of Nations. *Times*, Nov. 18, 1919.
- 17 PERU. Peru ratified peace treaty with Germany. *Times*, Nov. 20, 1919. *P. A. U.*, Feb., 1920.
- 19 SWITZERLAND. Federal Parliament voted in favor of Switzerland joining the League of Nations. *Times*, Nov. 20, 1919.
- 19 UNITED STATES. The Senate refused to consent to German peace treaty in original form, or with Lodge reservations. *Cong. Rec.*, Nov. 19, 1919.
- 21 GREAT BRITAIN—FRANCE. Great Britain ratified treaty of June 28, 1919, with France, providing for assistance in case of German aggression. *London Ga.*, Nov. 21, 1919.
- 21 POLAND. Supreme Council granted Poland a mandate over Eastern Galicia for 25 years. *N. Y. Times*, Nov. 22, 1919.
- 23 ARMENIA—AZERBAIJAN. Agreement signed to cease hostilities and settle all controversies by peaceful agreements. *Times*, Jan. 8, 1919; *Temps*, Jan. 10, 1920.
- 24 VATICAN—REPUBLIC OF AUSTRIA. Announced the Vatican had officially recognized the Republic of Austria. *Times*, Nov. 25, 1919.
- 27 ARGENTINE REPUBLIC—SPAIN. Treaty signed relative to indemnity for victims of labor accidents. *P. A. U.*, Feb., 1920.
- 27 BULGARIA. Peace treaty signed at Neuilly. *N. Y. Times*, Nov. 28, 1919. *Nation* (N. Y.), 109: 702; *Cur. Hist.*, 11 (Pt. 2): 259.
- 28 BELGIUM—GERMANY. Agreement signed relative to Belgian reimbursement. *Wash. Post*, Nov. 29, 1919.
- 28 LETVIA—GERMANY. Lettish Government withdrew its representative at Berlin and declared war on Germany. *N. Y. Herald*, Nov. 29, 1919.
- 30 GERMANY—LITHUANIA. Armistice signed for immediate evacuation of Lithuania by Germany. *N. Y. Times*, Dec. 1, 1919.

December, 1919.

- 1-3 PAN-AMERICAN WOMEN'S CONGRESS. First congress held at San Antonio, Tex., Dec. 1-3, 1919. *P. A. U.*, Feb., 1920, 50: 195-196.
- 4 CZECHO-SLOVAKIA. Constitution promulgated. *Cur. Hist.*, 11 (Pt. 2): 437.
- 4 GUATEMALA—UNITED STATES. International gold clearance fund convention signed. *International High Commission*.
- 5 JUGOSLAVIA—AUSTRIA—BULGARIA. Jugoslavia signed the peace treaties with Austria and Bulgaria. *N. Y. Times*, Dec. 6, 1919.
- 8 CHINA—JAPAN. China demanded reparation for recent Japanese acts at Fu-Chow. *N. Y. Times*, Dec. 4, 1919.
- 9 ROUMANIA. Peace treaties signed with Bulgaria and Austria, and treaty relative to rights of minorities signed with the Allied and Associated Powers. *N. Y. Times*, Dec. 11, 1919. See also *Sept. 3, 1919*, ante. *Cur. Hist.*, 11 (Pt. 2): 10, 531.
- 10 PANAMA—UNITED STATES. Commercial travelers' convention proclaimed. *U. S. Treaty Series*, No. 646.
- 17 AUSTRIA. Supreme Council note putting ban on separatist activities of several of the Austrian provinces was handed to Dr. Karl Renner. Text: *Cur. Hist.*, 11 (Pt. 2): 268.
- 17 AUSTRIA. Supreme Council voted a loan of \$70,000,000 to Austria. *Cur. Hist.*, 11 (Pt. 2): 267.
- 18 CUBA. The Cuban Senate approved the treaty of peace with Germany. *N. Y. Times*, Dec. 19, 1919.
- 22 HOLLAND. Announced that U. S. will not join Allies in demand on Holland for extradition of ex-Kaiser. *Wash. Post*, Dec. 23, 1919.
- 22 IRELAND. Government measure for Irish home rule introduced. *Cur. Hist.*, 11 (Pt. 2): 206.
- 26 FRANCE—LITHUANIA. Announced France had recognized the independence of Lithuania. *N. Y. Times*, Dec. 27, 1919.
- 26 JAPAN. Ratified peace treaty. *N. Y. Times*, Jan. 4, 1920.
- 29 ROUMANIA. Parliament of Roumania ratified decrees for the union of Bessarabia, Bukowina, and Transylvania, including Muramuresh, Crish and the Banat, with the old Rumanian kingdom. *Times*, Jan. 9, 1920.
- 31 ECUADOR—UNITED STATES. Commercial travelers' convention signed in Washington. *P. A. U.*, Feb., 1920.

- 31 ESTHONIA—SOVIET RUSSIA. Peace negotiations, begun at Dorpat on Dec. 6, were concluded successfully and preliminary armistice signed. *Cur. Hist.*, 11 (Pt. 2) : 293.

INTERNATIONAL CONVENTIONS

ADHESIONS AND RATIFICATIONS

BILLS OF EXCHANGE. The Hague. July 23, 1912.

Adhesion:

Brazil. Aug. 27, 1919. *P. A. U.*, 49: 596.

GENEVA CONVENTION, Aug. 22, 1864. Revisions.

Ratification:

Uruguay. Nov. 25, 1919. *Monit.*, Jan. 22, 1920.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Australia and India. Dec. 30, 1919. *Ga. de Madrid*, Feb. 5, 1920.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN ¹

Aliens. Report of committee appointed to consider applications for exemption from compulsory repatriation submitted by interned enemy aliens. (H. C. Repts. & Papers, 1919, 383.) 1½d.

Anti-dumping legislation. Final report. Ministry of Reconstruction. (Cmd. 455.) 2d.

Arms and ammunition, Convention for control of trade in, with protocol, signed Sept. 10, 1919. (Treaty series, 1919, No. 12.) French and English. 4½d.

Austria—Allied and Associated Powers. Treaty of peace, together with protocol and declaration, signed at St. Germain-en-Laye, Sept. 10, 1919. (With appendix.) (Treaty series, 1919, No. 11.) 1s. 10d.

Austro-Hungarian Monarchy, Agreement between Allied and Associated Powers with regard to contributions to cost of liberation of territories of. Signed at St. Germain, Sept. 10, 1919. (Treaty series, 1919, No. 14.) 1½d.

British and Foreign State Papers, 1915. Vol. CIX. 10s. 9d.

British nationality and status of aliens. The Naturalization Regulations, Oct. 18, 1919. (St. R. & O. 1919, No. 1552.) 1½d.

Congo Act. Convention revising the General Act of Berlin, Feb. 26, 1885, and the General Act and Declaration of Brussels, July 2, 1890. Signed at St. Germain, Sept. 10, 1919. (Treaty Series, 1919, No. 18.) 2d.

Copyright convention, international, signed at Berlin, Nov. 13, 1908, and additional protocol signed at Berne, March 20, 1914. Ratification by Sweden. (Treaty series, 1919, No. 13.) 1½d.

Czecho-Slovakia—Principal Allied and Associated Powers, Treaty between, signed at St. Germain, Sept. 10, 1919. (Treaty series, 1919, No. 30.) 2d.

¹ Parliamentary and Official Publications of Great Britain may be obtained, for the amount noted, from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Germany. Peace treaty Order in Council, Aug. 18, 1919. (St. R. & O. 1919, No. 1517) 1½d.

Italian reparation payments, Agreement between Allied and Associated Powers with regard to. Signed at St. Germain, Sept. 10, 1919. (Treaty series, 1919, No. 15.) 1½d.

Liquor traffic in Africa, Convention relating to the, with protocol¹ Signed at St. Germain, Sept. 10, 1919. (Treaty series, 1919, No. 19.) 2d.

Lusitania, S.S., Proceedings *in camera* on June 15 and 18, 1915, at the formal investigation into the circumstances attending the sinking of the, on May 7, 1915. (Cmd. 381.) 4d.

Merchant shipping losses. Return showing separately British merchant and fishing vessels captured or destroyed by the enemy; also British merchant vessels damaged or molested by the enemy, but not sunk; during the period Aug. 4, 1914, to Nov. 11, 1918; to show as far as is known name, gross tonnage, date, position, and method of attack, cause of loss or escape, and number of lives lost. (H. C. Repts. & Papers, 1919, 199.) 1s. 11d.

Serb-Croat-Slovene State—Allied and Associated Powers. Treaty signed at St. Germain, Sept. 10, 1919. (Treaty series, 1919, No. 17.) 1½d.

Spain, Treaty between United Kingdom and, respecting extradition between certain British-protected states in the Malay Peninsula and Spain. Signed at Madrid, June 20, 1919. (Treaty series, 1919, No. 16.) 1½d.

Trading with the enemy. General license of the Board of Trade as to trading with enemy nationals in China, Siam, Persia, Morocco, Liberia or Portuguese East Africa. Nov. 21, 1919. (St. R. & O. 1919, 1823.) 1½d.

UNITED STATES ²

Admiralty. Hearing on bill authorizing suits against United States in Admiralty. Aug. 26, 1919. 57 p. *Judiciary Committee*.

———. Hearing. 1919. 34 p. *Commerce Committee*.

———. Report to accompany. Sept. 27, 1919. 6 p. (S. rp. 223.) *Commerce Committee*, Dec. 12, 1919, 4 p. (II. rp. 497.) *Judiciary Committee*.

² Where prices are given, the document in question may be obtained, for the amount noted, from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Aeronautics. Convention relating to regulation of international air navigation agreed to by Allied and Associated Powers. 1919. 117 p., il. (S. doc. 91.) French and English. *Senate*.

Aliens, Hearings on bills to deport, for acts of disloyalty, and denial of public land privileges to certain aliens. 1919. 23 p. *Immigration and Naturalization Committee*.

———. Proposed deportation of, who surrendered first papers to escape military service. Hearings, Oct. 10-24, 1919. Pts. 1-3, 51 p. *Immigration and Naturalization Committee*.

———. Report to accompany bill for deportation of certain undesirable. Oct. 30, 1919. 2 p. (S. rp. 283.) *Immigration Committee*.

———. Report to accompany bill to exclude and expel aliens of anarchistic and similar classes. Dec. 16, 1919. 16 p. (H. rp. 504.) *Immigration and Naturalization Committee*.

American troops in Siberia, Hearings on resolution making rules to return all American soldiers from countries with which United States is at peace. Sept. 15, 1919. 38 p. *Military Affairs Committee*.

Arbitration convention between United States and Netherlands, May 2, 1908. Agreement extending duration of. March 8, 1919. 4 p. (Treaty series 641.) English and Dutch. *State Department*.

Armenia, Hearings before subcommittee on maintenance of peace in. 1919 (Pt. 1). 32 p. *Foreign Relations Committee*.

———. Republic of, Memorandum on recognition of government of, submitted by special mission of Armenia to United States. 1919. 15 p. (S. doc. 151.) *Senate*.

Armistice agreements between Allied and Associated Governments and Germany, Austria-Hungary and Bulgaria. 1919. 25 p. (S. doc. 147.) *Senate*.

Austria—Allied and Associated Powers. Treaty of peace. 1919. 219 p. (S. doc. 92.) *Senate*.

———. Letter of Allied and Associated Powers transmitting to Austrian delegation treaty of peace with Austria, with reply of Allied and Associated Powers to Austrian note of July 20, 1919, requesting certain modifications of terms. 1919. 44 p. (S. doc. 121.) *Senate*.

Baltic Provinces, Report of mission to Finland, Esthonia, Latvia, and Lithuania, on situation in, by Robert Hale, with accompanying papers. 1919. 42 p. (S. doc. 105.) *Senate*.

China, Neutralization of transportation in. Report made by Paul Whitman. Sept. 29, 1919. 1 p. (S. doc. 115.)

———. United States Court for. Statement of C. S. Lobingier in support of legislation relating to. 1919. 24 p. *Foreign Affairs Committee*.

Commercial travelers convention between United States and Guatemala, signed Dec. 3, 1918. (Treaty series 642.) English and Spanish. *State Department*.

———. Convention between United States and Uruguay, signed Aug. 27, 1918. 6 p. (Treaty series 640.) English and Spanish. *State Department*.

Czecho-Slovakia. Extracts from hearings on peace treaty with Germany pertaining to Czecho-Slovak Republic in relation to claims of Hungary. 1919. 39 p. *Foreign Relations Committee*.

Ellis, William T., American correspondent, Supplementary information regarding detention of, at Cairo, Egypt. (S. doc. 45, Pt. 2.) *State Department*.

Foreign Relations of United States, papers relating to, with annual message of President, Dec. 3, 1912. 1392 p., il. Cloth, \$1.25.

France—United States. Report on Constitutionality of treaty of June 28, 1919. Sept. 22, 1919. 32 p. (S. rp. 215.) *Judiciary Committee*.

German vessels. Executive order authorizing that possession and title of United States in all German vessels taken over and operated by United States during the war, be taken over in accordance with Joint Resolution approved May 12, 1917. Nov. 24, 1919. (No. 3176.) *State Department*.

Germany—Allied and Associated Powers. Exchange of notes respecting conditions of peace presented to Germany on May 7, 1919. 170 p. (S. doc. 149.) *Senate*.

———. Treaty of peace signed at Versailles, June 28, 1919. 537 p., 4 maps. (S. doc. 51.) French and English. *Senate*.

———. Data relating to peace treaty prepared by J. Reuben Clark, Jr. 43 p. (S. doc. 86.) *Senate*.

———. Hearings on peace treaty of Versailles, June 28, 1919. 1159 p. *Foreign Relations Committee*.

———. Hearings on treaty of peace. 1919. 1297 p. (S. doc. 106.)

Germany—Allied and Associated Powers. Majority report on treaty. Sept. 10, 1919. 7 p. (S. rp. 176, Pt. 1); reservations reported by Committee on Foreign Relations. 3 p. (S. doc. 87); views of minority. Sept. 11, 1919. 5 p. (S. rp. 176, Pt. 2.) Mr. McCumber's views in disagreement with majority report. Sept. 15, 1919. 9 p. (S. rp. 176, Pt. 3). *Foreign Relations Committee*.

———. Proposed reservations to peace treaty. 1919. 35 p. (S. doc. 139.) 50 p. (S. doc. 150.) *Senate*.

———. Reservations to treaty of peace. 1919. 7 p. (S. doc. 143.) *Foreign Relations Committee*.

———. Treaty showing amendments reported by Committee on Foreign Relations. 542 p. (S. doc. 85.) French and English. *Senate*.

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GEO. A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

ARKANSAS *v.* MISSISSIPPI¹

Supreme Court of the United States

March 19, 1919.

MR. JUSTICE DAY delivered the opinion of the court.

This is a suit brought to determine a portion of the boundary line between the States of Arkansas and Mississippi. It appears that at the place in dispute the Mississippi River formerly had its course from Friar's Point in a southwesterly direction, then made a turn to the south, flowing in a southerly direction, then a turn towards the west in the shape of a half moon, then a sharp turn to the north and flowing northerly, and thence westerly, making a bend in the river in the shape of a horseshoe, which was known as Horseshoe Bend. It is averred in the bill, that in 1848 the river suddenly left its course and ran westerly across the points of the bend, cutting off a tract of land which has become known as Horseshoe Island. The answer avers that this avulsion occurred in 1842; but the exact date is immaterial. That it did occur is clearly established, and it is generally spoken of in the testimony as happening in 1848. We may say preliminarily that we find no substance in the contention of the respondent that the allegations of the answer must be taken as true for want of replication. Under new Equity Rule 31 in a case of this character no replication is required in order to make the issues.

The State of Arkansas contends that the old course of the river before the avulsion was within a body of water now known as Horseshoe Lake or Old River, a body of water of considerable length and depth. The State of Mississippi contends that the old river ran through a body of water still remaining, but considerably further to the north, and known as Dustin Pond, and that before the avulsion

¹ 250 U. S. 39.

the course of the river on the upper side of the Bend was considerably to the westward of the course claimed by Arkansas, and ran where now there is a slough not far from the middle of Horseshoe Island. These diverse claims are illustrated by an examination of the map, exhibit A, attached to the bill.

As we view the case it is practically controlled by the decision of this court in *Arkansas v. Tennessee*, 264 U. S. 158. In view of that decision we are relieved of the necessity of a discussion in detail of much that is urged upon our attention now. Arkansas was admitted to the Union June 23, 1836 (5 Stat. 50, 51), by an act of Congress which as to its boundaries provided:

Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude to the Saint Francis river, thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red river, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the Mississippi, made and concluded at the city of Washington, on the 26th day of May, in the year of Our Lord one thousand eight hundred and twenty-eight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river to the thirty-sixth degree of north latitude, the point of beginning.

Mississippi had previously been admitted to the Union by an act of Congress April 3, 1818 (3 Stat. 348), which provided:

Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the county of Washington [Alabama], thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning.

It will be observed that the language of the Mississippi act, so far as now important to consider, fixes the boundary upon the Mississippi River as "up the same to the beginning," and the language of

the Arkansas act is: "beginning in the middle of the main channel of the Mississippi river . . . thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river, thence up the middle of the main channel of the said river to the thirty-sixth degree of north latitude, the point of beginning."

The State of Arkansas contends that these acts of Congress fix the middle of the channel of navigation as it existed before the avulsion as the boundary line between the States. By the State of Mississippi it is contended that the boundary line is a line equidistant from the well-defined banks of the river. Language to the same effect as that contained in the acts of admission now before us was before this court in the case of *Arkansas v. Tennessee*, *supra*, and in that case the subject was considered, and the meaning of the Arkansas act, and similar language in the act admitting the State of Tennessee, was interpreted. The rule laid down in *Iowa v. Illinois*, 147 U. S. 1, was followed, and it was held that where the States of the Union are separated by boundary lines described as "a line drawn along the middle of the river," or as "the middle of the main channel of the river," the boundary must be fixed at the middle of the main navigable channel, and not along the line equidistant between the banks. We regard that decision as settling the law, and see no reason to depart from it in this instance.

It is urgently insisted that the laws and decisions of Arkansas and Mississippi are to the contrary, and our attention is called to Joint Resolution of Congress of 1909, 35 Stat. 1161, which provides:

That the consent of the Congress of the United States is hereby given to the States of Mississippi and Arkansas to enter into such agreement or compact as they may deem desirable or necessary, not in conflict with the Constitution of the United States, or any law thereof, to fix the boundary line between said States, where the Mississippi river now, or formerly, formed the said boundary line and to cede respectively each to the other such tracts or parcels of the territory of each State as may have become separated from the main body thereof by changes in the course of the channel of the Mississippi river and also to adjudge and settle the jurisdiction to be exercised by said States, respectively, over offences arising out of the violation of the laws of said States upon the waters of the Mississippi river. Approved January 26, 1909.

No specific agreement appears to have been entered into under this act; but it is insisted that Arkansas and Mississippi by their respective constitutions have fixed the boundary line, as it is now

claimed to be by the State of Mississippi, and that such boundary line has become the true boundary of the States irrespective of the decision of this court in *Iowa v. Illinois*, *supra*, followed in *Arkansas v. Tennessee*, *supra*. We have examined the constitutions and decisions of the respective States, and find nothing in them to change the conclusions reached by this court in determining the question of boundary between States. A similar contention was made in *Arkansas v. Tennessee* as to the effect of the Arkansas and Tennessee legislation and decisions, and the contention that the local law and decisions controlled in a case where the interstate boundary was required to be fixed, under circumstances very similar to those here presented, was rejected. In that case the Arkansas cases, which are now insisted upon as authority for the respondent's contention, were fully reviewed. The Mississippi cases called to our attention, of which the leading one seems to be *The Steamboat Magnolia v. Marshall*, 39 Mississippi 109, as well as the legislation of the State, seem to sustain the claim that local jurisdiction and right of soil to the middle of the river, is fixed by a line equidistant from the banks. But whatever may be the effect of these decisions upon local rights of property or the administration of the criminal laws of the State, when the question becomes one of fixing the boundary between States separated by a navigable stream, it was specifically held in *Iowa v. Illinois*, *supra*, followed in later cases, that the controlling consideration is that which preserves to each State equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river. In *Arkansas v. Tennessee*, *supra*, p. 171, we said:

The rule thus adopted [that declared in *Iowa v. Illinois*] known as the rule of the "thalweg," has been treated as set at rest by that decision. *Louisiana v. Mississippi*, 202 U. S. 1, 49; *Washington v. Oregon*, 211 U. S. 127, 134; 214 U. S. 205, 215. The argument submitted in behalf of the defendant State in the case at bar, including a reference to the notable recent decision of its Supreme Court in *State v. Muncie Pulp Co.* (1907), 119 Tennessee, 47, has failed to convince us that this rule ought now, after the lapse of twenty-five years, to be departed from.

We are unable to find occasion to depart from this rule because of long acquiescence in enactments and decisions, and the practices of the inhabitants of the disputed territory in recognition of a boundary, which have been given weight in a number of our cases where

the true boundary line was difficult to ascertain. (See *Arkansas v. Tennessee*, *supra*, and the cases cited at p. 172.)

This record presents a clear case of a change in the course of the river by avulsion, and the applicable rule established in this court, and repeatedly enforced, requires the boundary line to be fixed at the middle of the channel of navigation as it existed just previous to the avulsion. The location and determination of such boundary is a matter which we shall leave in the first instance to a commission of three competent persons to be named by the court upon suggestion of counsel, as was done in *Arkansas v. Tennessee*. See 247 U. S. 461. This commission will have before it the record in this case, and such further proofs as it may be authorized to receive by an interlocutory decree to be entered in the case. Counsel may prepare and submit the form of such decree.

THE PROTON¹

Judicial Committee of the Privy Council

March 15, 1918

This was an appeal from the judgment of the Supreme Court of Egypt (in Prize), pronouncing the *Proton* to have belonged at the time of capture and seizure to enemies of the Crown, and condemning her as good and lawful prize.

Lord Sumner, delivering their Lordships' judgment, said that on February 8, 1916, the *Proton* was condemned in prize. The present appeal was brought by George Kotsoyillis, master, and Michael Kouremetis, claiming as owner of the ship. The former only represented the title of Kouremetis, his employer. The *Proton* was on the Greek register, and flew the Greek flag. There was nothing in the evidence to show that she was not entitled to do so. The ground of condemnation was that she belonged to the German Government. The appellants contended that her flag was conclusive. They relied on Chapter VI of the Declaration of London, which dealt with enemy character, and by Article 57 provided: "Subject to the provisions respecting transfer to another flag" (which did not apply here) "the neutral or enemy character of a vessel is determined by the flag which she

¹ 34 The *Times* Law Reports, 309.

is entitled to fly." It was not necessary to consider whether that provision would in any case apply if the use of the neutral flag were only part of a fraudulent design to defeat belligerent rights.

Their Lordships held in *The Zamora* (32 *The Times* L. R., 436; [1916] 2 A. C. 77) that while the Crown could not by Order in Council prescribe or alter the law to be administered by a court of prize, the court would act on Orders in Council in every case in which they amounted to a mitigation of the Crown's rights in favor of the enemy or neutral, as the case might be. The Declaration of London Order in Council, No. 2, 1914, which declared that the provisions of the Declaration of London should be adopted and put into force, was in force at the material time in this case. Did Article 57 prescribe the law to be administered by a court of prize or did it direct that the rights of the Crown were to be mitigated in favor of a neutral or of the enemy? In their Lordships' opinion, the former was the effect of the article. It declared that a court of prize should determine the character of a vessel alleged to be of enemy character by one single circumstance, the character of the flag which she was entitled to fly, and not by the entire body of relevant circumstances which determined the truth as to that character. That was a positive prescription as to a material part of the law of evidence. Furthermore, the surrender of the rights of the Crown was a thing not to be inferred from doubtful language or from general considerations, especially in a case of fraud and in a matter so grave as the exercise of sovereign belligerent rights. The terms of this article were little adapted to a waiver of His Majesty's rights in favor of others; they clearly purported to prescribe the law on a topic which had been the subject of many decisions. Their Lordships were of opinion that, notwithstanding the Order in Council, it was their duty, sitting in prize, to consider the facts proved in order to ascertain what the character of the *Proton* really was.

When she was seized on May 16, 1915, she was loading oats at the Turkish port of Kiuluk, having lately arrived from Calymnos. One "Mihail Kromatis" was entered on the ship's papers as a seaman, and was on board purporting to act in that capacity, but he stated to the British officer who searched the vessel that he was really her owner traveling in the vessel to buy goods at one port and sell them at another, and he was now the chief appellant. The ship had left Piræus in ballast on April 22 for Adalia, where he bought eggs,

chickens, and bullocks, and he left with them for Samos and Piræus. It was suggested that he was entered in the ship's papers as a seaman because there was no other capacity in which he could be entered, but that was mere guesswork. He came to Alexandria, presumably in the vessel, but he did not think fit to remain for the trial or to give evidence on oath.

The master, however, gave evidence on his behalf. He swore that on the passage from Adalia, as the weather was rough, some of the bullocks became seasick, whereupon it was decided to land them and the other cargo at the island of Calymnos. That was how the vessel came to be loading at Kiuluk. That story the learned judge did not believe, nor were their Lordships invited to give it credence. It was admitted that the *Proton* had been taken into Calymnos to pick up and run a cargo of contraband—namely, fuel oil in tins—into the Turkish port of Budrum, only a few hours away on the mainland. That enterprise, however, was forestalled. No doubt that was true so far as it went, but there was a good deal more in her manœuvres. Calymnos was the birthplace of M. Michael Kouremetis, and the day after his arrival in the *Proton* there arrived the steamship *Vassilefs Constantinos* laden with fuel oil consigned to his uncle, who was a tailor. M. Kouremetis promptly boarded her and tried hard, without success, to induce the captain to take the cargo of oil on to Budrum. He then tried to get it transferred to the *Proton*, but the ship's agent insisted that the oil must be landed. When that had been done the Italian authorities, who were in occupation of the island, declined to let it go again. They suspected an attempt to supply this fuel to the Turks.

Who, then, was M. M. Kouremetis? Of Greek race and a Calymniote born, and therefore an Ottoman subject; for 14 years or more he had been in business as a sponge merchant at Hamburg. He said that he prospered there, but there was evidence that about 1913 he failed in business, having quarrelled with, and become heavily indebted to, his German partner, Herr Emil Stiller. He was then taken into the service of the Deutsche-Tripolitanische Handels-Aktien-Gesellschaft. He further said that, having made a considerable fortune, he realized it at the outbreak of war and quitted Germany for home. On April 15, 1915, he obtained a certificate of Greek nationality and became a subject of the King of the Hellenes, and two days later he bought the *Proton* for about 160,000 fr. As he was

also able about the same time to buy the fuel oil cargo shipped in the *Vassilefs Constantinos*, and the flour, the corn, and some of the bullocks shipped in the *Proton* at Adalia, he must have disposed of considerable sums. He said that there were further sums amounting to about 20,000 fr., which he had placed in the hands of two Calymniote merchants, Vouvalis and Manglis, and he claimed to have used a great deal more money than that. There was, however, evidence to the contrary given by persons competent to speak of the facts. The brother of the appellant, P. Kouremetis, could not say whether he was a poor man or a millionaire, but Aristotelis Manglis, a merchant of Calymnos, swore that Michael Kouremetis came home from Germany in the autumn of 1914 practically penniless, and in April, 1915, was well provided with funds, and he appeared to be quite innocent of any knowledge that he held 10,500 fr. on deposit from M. Michael Kouremetis. Nicholas Vouvalis, too, was equally unaware of the deposit alleged to have been made with him. According to Dimitri Michael Maroulakis, of Calymnos, M. Michael Kouremetis told him that he was supplied with funds from the Turkish and German Embassies, had paid 24,000 fr. to the Mutesarrif of Adalia (which seemed a large sum for mere baksheesh on the shipment of flour and bullocks), and was in the habit of frequently calling at the Germany Embassy in Athens.

All these facts were deposed to in affidavits, or, in the case of Vouvalis, were stated in a letter, which, as it appeared without objection in the record, their Lordships took to have been admitted in evidence by consent. It was true that the affidavits contained many other statements which were not evidence and were not trustworthy. They revelled in rumors, they abounded in hearsay, they contained many exaggerations and some extravagancies, and after all they were affidavits. Still, the learned judge was vigilantly on his guard against such parts of them as were inadmissible; he was well qualified to appraise them at their true value, and in the result he accepted them. On the other hand, the appellant gave no evidence on oath. A letter which he wrote to the Minister for Foreign Affairs of the Hellenic Government was allowed to be read in evidence, and probably would have been of no greater weight if formally attested, but the learned judge did not believe it. Numerous and precise statements were to be found in it as to the appellant's ample means, every one of which could have been readily and cogently

confirmed by documentary evidence, which he must either have had in his possession or might easily have obtained. No such documents were forthcoming, and M. Kouremetis must accept the consequences, which attended those who advanced claims but withheld the evidence which, if their claims were just, candor and self-interest would alike have impelled them to give.

The learned judge disbelieved the appellant's case and on the evidence found: (1) that M. Kouremetis had not means of his own with which to buy the *Proton*; that he did not buy her, and was not her owner; and that he only figured as her owner that she might continue to fly the Greek flag as a convenient but dishonest device; (2) that, in view of his enemy associations, he must have bought her with German money; (3) that only the German Government could have been concerned in laying out so much money on the ship in order forthwith to hazard her in so dubious and dangerous an adventure; (4) that, as M. Kouremetis was no seaman, he could only have been on board to look after the interests of the German Government, his employers. If the learned judge's first finding was right, the appeal failed, for M. Kouremetis had no character except that of owner in which he could claim to have the ship released to him, and, if not her owner, had no *locus standi* to criticize or complain of her condemnation.

Their Lordships did not wish to be understood as casting any doubt on the other findings, but it was not necessary that they should express any opinion about them. It was enough to say that, in their opinion, the finding that the *Proton* did not belong to the appellant, and that his purported ownership was a mere blind to enable a German ship to conceal her character by continuing to fly the Greek flag as before, was well warranted by the evidence.

Their Lordships would accordingly humbly advise his Majesty that this appeal should be dismissed, with costs.

THE HAMBORN¹*Judicial Committee of the Privy Council*

July 31, 1919

Lord Sumner in delivering their Lordships' judgment said: The late President condemned the *S.S. Hamborn* upon the ground that she was "a German vessel belonging to German owners." Her owners, the appellants, contend that they are a limited liability company, incorporated in Holland according to Dutch law, and that their ship was on the Dutch register of shipping and that she flew, as well as she might, the flag of the Kingdom of the Netherlands. Literally all this is true. The President spoke of her as being "nominally" owned by a Dutch company, but held that she "must be regarded as belonging to German subjects," and, quoting from *The Fortuna* (1 Dodson, 81), "it is no inconsiderable part of the ordinary occupation of this court to pull off this mask and exhibit the vessel so disguised in her true character," he laid it down that "the court is not bound to determine the neutral or enemy character of a vessel by the flag she is flying or may be entitled to fly at the time of capture." In fact, however, in this case there is no mask to be pulled off, if by that is meant some deception to be exposed. The appellant company really is a Dutch company; the ship was bought before the war and really was the company's property. The company is not shown to be a nominee holding in trust for other persons. There seems to have been no disguise or concealment or attempt to delude either the captors or the court, and, according to the municipal law applicable—namely that of Holland—the appellants are a Dutch incorporation, and the ship is theirs and enjoys the rights and is subject to the obligations which attach to a Dutch ship. Evidently there is some inaccuracy, no doubt inadvertent, in the language employed by the President, and on this the appellant's argument is rested.

The facts are these: The appellant company, the NaamlOOze Vennootschap Maatschappij Stoomschip Hamborn (or the Hamborn Steamship Company) is a single-ship company, and the whole of its shares belong in equal moieties to two other Dutch companies,

¹ 35 *The Times Law Reports*, 726.

the Naamlooze Vennootschap Handels en Transport Maatschappij Vulcaan of Rotterdam (or the Transport Company) and the Vulcaan Kohlen Maatschappij, also of Rotterdam (or the Coal Company). As to the transport company, all the shares but two, which belong to the German firm of Thyssen and Company of Mulheim on the Ruhr, are the property of a German company, the Gewerkschaft Deutsche Kaiser of Hamborn. The shares of the coal company are held exclusively by three companies, the Vulcaan Transport Company above mentioned, and two German companies, the Gewerkschaft Rhein and the Gewerkschaft Lohberg, both of Hamborn. All the directors and shareholders of the last two companies are Germans, resident in Germany. So are the directors of the Vulcaan Transport Company, and they have under their supervision and control as managers two Germans, who have resided in Holland since the formation of the appellant company in 1913 and attend to the practical business details of the Vulcaan Transport Company, which in its turn holds the office of manager to the Hamborn Steamship Company. It does not appear that they have any business of their own, and before the appellant company was formed they were clerks employed by the Deutsche Kaiser Company, the one till 1907, the other till 1910.

Sufficient details are given of the ship's regular trade to make it quite clear what she was bought for. Her trade was, with unimportant exceptions, to load ore at Spanish ore ports for Rotterdam, going out with coal from South Wales to French ports to save a ballast voyage. When the war broke out, she was sent across the Atlantic and was trading on time charter there when she was captured. The transport company, which owns half the capital of the appellant company, was incorporated to own and manage lighters and tugs for the carriage of cargo up the Rhine and its tributaries, on behalf, among others, of the Deutsche Kaiser Company, for whom it carries ore. Thyssen and Company and the Deutsche Kaiser Company own ironworks in Germany, and there was not a single person interested in any of these companies at the time of the capture who was not an enemy subject. Their Lordships entertain no doubt that the *Hamborn* was bought and employed as a useful tender to the German iron industry on the Ruhr, that her other trading was ancillary, and that her Dutch flag, Dutch ownership, and local management at Rotterdam were adopted merely for the convenience of her German import trade. For some purposes no doubt she be-

longed to and was counted as part of the mercantile marine of the Kingdom of the Netherlands, but in substance she and her trade were a support to and a part of the commerce and the shipping of the German Empire. The legal effect of all this, particularly on her liability to capture, is another matter.

The true question is one, in the President's phrase, of determining the neutral or enemy character of the *Hamborn*. Unless either her Dutch flag of the country of incorporation of the owning company or the place of residence of her subordinate managers or some or all of these matters be conclusive, she bore a character which justified her condemnation, for she formed part of that enemy commerce which a belligerent is entitled to disable and restrain.

It may be as well to put on one side certain aspects of the effect of using a national flag which are not now relevant and are really only false analogies. If a ship for her own purposes has assumed and used a national flag to which she is not really entitled, she may in some circumstances be held bound by the nationality which she has thus assumed without warrant. If a ship lawfully flies a national flag, she may in some cases be said, by a figure of speech, to derive from her flag the system of municipal law by which her contracts or her civil liabilities are governed. In the first case she cannot deny as against captors the national character which she has irregularly taken; in the second, she derives from the national character which is actually hers and is indicated by her flag the system of legal rights and liabilities applicable to her. Neither case touches the position where in a question with captors it becomes necessary to consider whether the ship, though in contemplation of technical municipal law a neutral ship, of neutral registry, and entitled to the benefits of a neutral flag, is, in the view of the law of nations, a ship of enemy character and liable to be treated in accordance with that character. If the case turned on her user *de facto* at the time of capture it would be simple; so it would be if her owners were natural persons of neutral nationality *de jure*, neither adhering to the enemy nor allowing their chattel to be used in enemy service. The present case is more complex. The criteria for deciding enemy character in the case of an artificial person differ from those applicable to a natural person, since in the nature of things conduct, which is one of the most important matters, can in the former case only be the conduct of those who act for or in the name of the artificial person. It was decided

in the case of *Daimler Company (Limited) v. Continental Tyre and Rubber Company (Great Britain) (Limited)* (32 *The Times* L. R., 624; [1916] 2 A. C., 307) that, in the case of an incorporated company, the right and power of control may form a true criterion, the control, that is, of those persons who are the active directors of the company and whose orders its officers must obey, or the control of those persons who in their turn are the masters of the directorate and make or unmake it by the use of the controlling majority of votes. The application of this test presents no difficulty here, for no living person and no sentient mind exercised or possessed any control over the Hamborn Steamship Company, except persons and minds of enemy nationality. The residence of the two German managers in Rotterdam, if not altogether immaterial, at any rate cannot affect the result, since the question is not one of trading with enemy subjects, resident or carrying on business in a neutral country, but is one of the character of an artificial *persona*, whose trade is carried on for it under the supreme direction and control of enemies born. Their Lordships agree with a passage of the President's judgment which sufficiently represents the true gist of his reasoning—"The centre and whole effective control of the business of the Hamborn Steamship Company were in Germany. Having regard to these facts, the vessel must be regarded in this court as belonging to German subjects," in a claim by captors for condemnation.

One small point remains. By Article 57 of the Declaration of London, varying the rule of international law, the neutral or enemy character of a ship is simply determined by the flag which she is entitled to fly. Down to the 25th October, 1915, the Crown, by adopting the Declaration of London, had waived its right to rely on other criteria. On that day was published an Order in Council by which that waiver was withdrawn. The ship was captured on the 27th October. It is said that the appellant company were unaware of this order, but its ignorance cannot have the effect of compelling the Crown to continue to waive rights which in truth were in full effect, nor, if knowledge of this kind could matter, would it be the knowledge of the company, which merely owned the ship, but that of the time charterers, who sent her to sea, as to whom nothing is proved.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

THE PORTO ALEXANDRE¹*British Court of Appeal*

November 10, 1919

The *Porto Alexandre* was an enemy ship of German origin which, after having been requisitioned by the Portuguese Government, had been condemned by their courts as prize. She was handed over to an office at Lisbon, and on September 13th last, while she was carrying a cargo shipped by and consigned to the Portuguese Import and Export Company (Limited), from Lisbon to Liverpool, she got into difficulties in the Crosby Channel, River Mersey. Assistance was rendered by the steam tugs *Nora*, *Expert*, and *Torfrida*, the owners, masters, and crews of which, on September 16th, issued writs *in rem*, claiming salvage. The *Porto Alexandre* was then arrested, and an appearance under protest was entered on behalf of the ship and freight. Application was then made for the release of the vessel to the Liverpool District Registrar, who granted the application, but his order, on appeal, was set aside by the Vacation Judge, without prejudice to an application to be made to set aside the writ and all other proceedings. That application came before Mr. Justice Hill, who was informed by the Portuguese Chargé d'Affaires that the *Porto Alexandre* was a public vessel belonging to the Portuguese Government. The learned judge, after argument, came with reluctance to the conclusion that the writ and all other proceedings must be set aside, on the ground that the vessel, being the property of a sovereign state, was immune from arrest. The plaintiffs appealed, but the court, without calling on counsel for the respondents, dismissed the appeal.

Lord Justice Banks said that this was an appeal from a decision of Mr. Justice Hill who made an order that the writ and warrant of arrest against the *Porto Alexandre* should be set aside but that the writ against the cargo should stand. The appeal only applied to the ship. His Lordship stated the facts and said that the application granted by the learned judge was based on the principle that the ship was the property of a foreign state and that she was therefore immune from arrest. His finding was a conclusion of fact that the vessel was the property of the Portuguese Government at the time of her arrest and was still their property and on that ground he made the order. It was now said that that was not sufficient, that to enjoy immunity the vessel must be employed in the public service of the Portuguese Government. The *Porto Alexandre*, formerly the steamship *Ingbert*, owned by Germans, was requisitioned

¹ 36 *Times Law Reports*, 66.

by the Portuguese Government in August, 1916. A certificate or passport, under the seal of the Republic of Portugal, asserting that the vessel was a state-owned vessel belonging to the Government of the Portuguese Republic and employed on Portuguese Government service, was issued on October 24, 1919. The port of registry endorsed on the passport was Lisbon. It also appeared from the passport that on January 30, 1917, the vessel was adjudged by a Portuguese court to be lawful prize of war. A further statement had been made by the Portuguese Consul that freight had been made before shipment of the cargo and belonged to the Portuguese Government. In addition to that there was a letter from the Portuguese Chargé d'Affaires in London, in which he stated that the *Porto Alexandre* was a public vessel belonging to the Portuguese Government. The court had not the slightest doubt that under the orders of the Portuguese Government the ship was earning freight for that government. Mr. Dunlop had contended that that was not sufficient because the trading had destroyed the privilege from arrest. The question to be decided was whether it was possible in the circumstances to distinguish the present case from that of *The Parlement Belge* (5 P. D., 197), a decision of, and therefore binding upon, this court. The question was one of great importance. It might be that former decisions related chiefly to war vessels, but in recent times governments had taken to the use of vessels of war for trading purposes. The duty of the court in the first place was to decide whether the present case was covered by *The Parlement Belge* (*supra*). If not, it would be necessary to consider the importance of the question generally. In his Lordship's opinion, however, the case of *The Parlement Belge* (*supra*) exactly covered the present case. There was very little difference in the facts of the two cases, those of the former being set out in 4 P. D., 129. There was this difference, however, that, in the information and protest filed by the Attorney-General on behalf of the Crown, these two points were taken, (1) that the *Parlement Belge* was a mail packet running between Dover and Ostend, and (2) that the vessel was the property and in the possession of the King of the Belgians, and consequently, under the general law, exempt from legal proceedings. As his Lordship read the case the facts appearing in paragraph 2 of the protest were that the vessel was a public ship belonging to and employed and navigated by the Belgian Government. There was, therefore, no material dis-

tion on the facts between that case and the present. In the Court of Appeal Lord Justice Brett said that three main questions had been argued before the court, (1) whether the court had jurisdiction to seize the Belgian vessel in a suit *in rem*; (2) whether, if the court would otherwise have such jurisdiction, it was ousted by Article 6 of the convention made between this country and Belgium in 1876; and (3) whether any exemption from the jurisdiction of the court, which the vessel might otherwise have had, was lost by reason of sea trading in the carriage of goods and persons. The judgment, however, was concerned with the answers to questions (1) and (3) only. It was quite true that in many earlier cases the plea for immunity was put forward on the grounds that the ship was a public vessel and in the public service of a foreign state, and judgment was delivered on those grounds on the facts as stated, but there was nothing in the earlier cases before *The Parlement Belge* (*supra*) to show that the fact that the vessel was engaged in the public service was a fact essential to the judgment. When one considered the last part of Lord Justice Brett's judgment (5 P. D. at pp. 219, 220) it seemed in terms to cover the present case. He there said:

The case of *The Bold Buccleugh* (7 Moo. P. C. 267) does not decide to the contrary of this. It decides that an action *in rem* is a different action from one *in personam* and has a different result. But it does not decide that a court which seizes and sells a man's property does not assume to make that man subject to its jurisdiction. To implead an independent sovereign in such a way is to call upon him to sacrifice either his property or his independence. To place him in that position is a breach of the principle upon which his immunity from jurisdiction rests. We think that he cannot be so indirectly impleaded any more than he could be directly impleaded. The case is, upon this consideration of it, brought within the general rule that a sovereign authority cannot be personally impleaded in any court. But it is said that the immunity is lost by reason of the ship having been used for trading purposes. As to this it must be maintained either that the ship has been so used as to have been employed substantially as a mere trading ship, and not substantially for national purposes, or that a use of her in part for trading purposes takes away the immunity, although she is in possession of the sovereign authority by the hands of commissioned officers, and is substantially in use for national purposes. Both these propositions raise the question of how the ship must be considered to have been employed. As to the first, the ship has been by the sovereign of Belgium, by the usual means, declared to be in his possession as sovereign, and to be a public vessel of the state. It seems very difficult to say that any court can inquire by contentious testimony whether that declaration is or is not correct. To submit to such an inquiry before the court is to submit to its jurisdiction.

His Lordship said that the vessel in the present case had been declared to be a public vessel belonging to the Portuguese Government. Lord Justice Brett continued:

It has been held that if the ship be declared by the sovereign authority by the usual means to be a ship of war, that declaration cannot be inquired into. That was expressly decided under very trying circumstances in the case of *The Exchange* (7 Cranch 116). Whether the ship is a public ship used for national purposes seems to come within the same pale.

His Lordship said that he read that statement as a correct exposition of the law. Lord Justice Brett went on to say:

But if such an inquiry could properly be instituted it seems clear that in the present case the ship has been mainly used for the purpose of carrying the mails, and only subserviently to that main object for the purposes of trade. The carrying of passengers and merchandise has been subordinated to the duty of carrying the mails. The ship is not, in fact, brought within the first proposition.

Lord Justice Brett merely added that as an additional statement and not as a necessary ingredient. In his Lordship's opinion this court was bound by that decision, and the appeal must be dismissed with costs.

MARKWALD *v.* ATTORNEY-GENERAL.¹

British Court of Appeal

January 14, 1920

This appeal from a decision of Mr. Justice Astbury raised a question as to the status in the United Kingdom of an alien who had been naturalized as a British subject under a Colonial statute.

The plaintiff, Heinrich Hermann Markwald, was born in Germany in 1859, and he left Germany in 1878 to settle in Australia. In 1908 he obtained a certificate of British naturalization in Australia, under the Naturalization Act, 1903, of the Australian Commonwealth, by section 8 of which it is provided that a person to whom such a certificate is granted shall be entitled to all the political and other rights of a British subject in the Commonwealth. In the case of an applicant not naturalized in the United Kingdom the section says that the Governor-General is not to issue the certificate until he has received the certificate of a judge or special magistrate that the applicant has before him taken the oath or made an affirmation of allegiance to the King and his successors.

¹ 36 *The Times Law Reports*, 197.

The applicant, having been granted a certificate of naturalization, shortly afterwards in 1908, came to England to reside, and was there at the time of the outbreak of war in 1914. He was then required to register himself as an alien under the Aliens Restriction Act, 1914 (4 and 5 Geo. V., c. 12), by which it was provided that if any question arose in any proceedings under the Order in Council imposing restrictions on aliens, whether any person was or was not an alien, the onus of proof that he was not an alien was to be upon that person. He refused to register, and when he was prosecuted for his failure to do so, the magistrate held that he had not discharged the onus of proving that he was not an alien, and he convicted him.

On appeal to the Divisional Court, the conviction was upheld. The case is reported as *Rex v. Francis—Ex parte Markwald* (34 *The Times* L. R., 273; [1918] 1 K. B. 617).

The plaintiff thereupon commenced this action against the Attorney-General, claiming a declaration that he was "no alien in England, but a liege subject of his Majesty the King in all parts of his Majesty's Kingdom and Dominions." It was admitted that he had no political rights or duties in this country, but it was contended that as he had been naturalized in a British colony, he was not an alien and was therefore exempt from the restrictions to which all aliens were subject, and from the proceedings brought to enforce them.

Mr. Justice Astbury held that the decision of the Divisional Court in *Rex v. Francis* (*supra*), whether it amounted to a matter of *res judicata* or not in the strict sense, was a decision on the very point raised in the action, and therefore he said that he would follow it. He doubted on the plaintiff's own evidence whether the plaintiff had ever taken the oath of allegiance at all, at any rate, his doing so had made no impression on his mind. His Lordship therefore felt unable to grant the plaintiff the relief for which he asked and he dismissed the action. The Attorney-General did not ask for costs.

The plaintiff appealed.

The Court of Appeal dismissed the appeal.

The Master of the Rolls said that this was an appeal from Mr. Justice Astbury, who declined to make the declaration for which the appellant asked, that he was "no alien in England, but a liege subject of his Majesty the King and entitled to the protection of his Majesty the King in all parts of his Majesty's Kingdom and Dominions." Mr. Justice Astbury decided the matter on the authority of the grounds given for the decision of the Divisional Court in *Rex v. Francis* (*supra*). The point that this was not a proper case in which to make a declaration had not been taken in this court, but he (his Lordship) desired to guard himself from being thought to hold that this was a proper case for a declaratory order. As, on other grounds, he had come to the conclusion that the appellant was not entitled

to the declaration asked for, it was not necessary to deal with that point, although he did not think that the court was bound to make a declaratory order that it thought improper merely because the point that the case was not one in which a declaratory order should be made was not taken by way of defence.

His Lordship then reviewed the facts down to the decision of the Divisional Court, at the same time stating that for the purpose of the present case he was going to assume, without deciding it, that the appellant had at all material times ceased to be of German or Prussian nationality. Continuing, his Lordship said that the argument for the appellant was that as the result of the certificate of naturalization obtained in Australia by itself, or else as the result of the certificate coupled with the oath of allegiance taken in order to obtain it, or else, perhaps, as the result of both the certificate and the oath the appellant had ceased to be an alien within Great Britain. What it was said that he had become was not quite clear. It was said that he was no alien and perhaps a liege man of the King. In order to see what the position was it was necessary to examine the legislation.

By section 7 of the Naturalization Act, 1870 (33 Vict., c. 14), it was provided that an alien who fulfilled certain conditions might apply for naturalization and that the Secretary of State, if he were satisfied with the evidence adduced, might give or withhold the certificate as he thought most conducive to the public good, but that the certificate was not to take effect till the oath of allegiance had been taken. The section then went on:

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom. . . .

In section 16 of the same Act there was this provision:

All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by her Majesty in the same manner, and subject to the same rules in and subject to which her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

Therefore the scheme was that the Secretary of State might grant certificates of naturalization which would give the rights, powers, and privileges of a natural-born British subject within the United Kingdom and that a British possession might make laws by which the same rights, powers, and privileges might be conferred within that possession.

In 1900 there was passed the Commonwealth of Australia Constitution Act, 1900 (63 and 64 Vict., c. 12), and in 1903 there was passed in Australia the Naturalization Act, 1903. The latter Act provided by section 5 that a "person resident in the Commonwealth, not being a British subject, and not being an aboriginal native of Asia, Africa, or the islands of the Pacific, excepting New Zealand, who intends to settle in the Commonwealth, and who" possessed certain specified qualifications, "may apply to the Governor-General for a certificate of naturalization." Section 7 provided that "the Governor-General in Council, if satisfied with the evidence adduced, shall consider the application, and may . . . in his discretion grant or withhold a certificate of naturalization, as he thinks most conducive to the public good." Then in section 8 the effect of a certificate of naturalization was stated:

A person to whom a certificate of naturalization is granted shall, in the Commonwealth, be entitled to all political and other rights, powers, and privileges, and, be subject to all obligations to which a natural-born British subject is entitled or subject in the Commonwealth.

But it was provided in the latter part of section 7 that in the case of an applicant who had not obtained in the United Kingdom a certificate of naturalization he should first take an oath or affirmation in the form in the schedule to the Constitution. That oath was in the ordinary form of the oath of allegiance. Some doubts had been raised here whether the appellant had taken the oath of allegiance in Australia, but he (his Lordship) would take it that he had. It was upon these facts that the arguments which he (his Lordship) had already mentioned arose.

It was clear that the appellant had not ceased to be an alien here by virtue of the Australian certificate of naturalization; indeed, the argument that he had had not been strongly pressed. It was contrary to the scheme of the Naturalization Acts before that of 1914. In addition, the wording of section 8 of the Act of 1903 was as clear

as possible, and the certificate itself only gave "all political and other rights, powers and privileges . . . to which a natural-born British subject is entitled or subject in the Commonwealth"; and although it did not add "and not elsewhere," that was clearly the meaning of it.

The greatest stress had been laid, however, on the oath of allegiance which was required in order to obtain the certificate of naturalization. It was said that the appellant, by taking that oath, became the King's liege man wherever he might be, and that he therefore ceased to be an alien not only in Australia but throughout the King's Kingdom and Dominions. In answer to that the Divisional Court had held that the oath of allegiance did not necessarily have that effect. Then Mr. Justice Darling, after commenting on Calvin's Case (7 Co. Rep., 1a), said ([1918] 1 K. B., at p. 622):

Be that as it may, I am of opinion that a man by virtue of such a certificate of naturalization as was granted here and of the oath of allegiance may become the liege subject of the King in some part of his Dominions, yet not in all; and wherever he is not a subject he is an alien.

Mr. Justice Bray said:

The certificate of naturalization contained the same limitations [that was, the same limitations as section 8 of the Act of 1903], it affected only the rights and obligations in the Commonwealth; yet it is said that inasmuch as this man had taken the oath of allegiance which every person who is naturalized has to take, his status in the United Kingdom was immediately altered, and he became a British subject there in defiance of these restrictions. This is an impossible result. I see no difficulty in a man becoming a British subject in the Commonwealth and not in the United Kingdom if an Act of a State, acting within its powers, so enacts; and that is what, in my opinion, the Commonwealth Act of 1903 did enact.

Mr. Justice A. T. Lawrence said:

Before this limited naturalization he was an alien. Nothing but naturalization under powers conferred by Act of Parliament of the United Kingdom can make him other than an alien in the United Kingdom. If this certificate of naturalization had purported to confer upon him the rights of a British subject within the United Kingdom, it would have been *ultra vires*. It does not, of course, purport to do anything of the sort. It is limited in its application to rights and duties within the Commonwealth. And the oath of allegiance which was relied upon by Sir Ernest Pollock does not appear to me to extend the limits of the applicant's naturalization. It is quite true that allegiance creates

reciprocal rights and duties. Allegiance is not created by the oath; it exists apart from it; and before any oath has been taken, as in the case of the natural-born subject, so also in the case of the foreigner resident within this country or within the Dominions of the King. The oath of allegiance does but consecrate the allegiance already existing.

These passages contained the gist of the reasoning challenged in this appeal. He (his Lordship) thought them substantially correct. The intention of the Legislature was to confer rights and powers only within the State or Dominion granting the certificate. As a condition of getting those rights the applicant was required to take the oath of allegiance. It was a person who was not a natural-born subject but an alien who was making the application, and the oath of allegiance was taken by a person who was not a natural-born subject but an alien for the purpose of getting the limited rights conferred by the certificate. What was required, therefore, was an oath of allegiance co-extensive with the rights as a condition of which the oath was required.

Reliance was placed on Calvin's case (*supra*). That case showed that in the case of a natural-born subject the allegiance to a lord who was lord of more than one dominion was not allegiance for the one dominion but an allegiance personal to the lord throughout his dominions. But it also showed that there might be a local allegiance in the case of a person who was not a natural-born subject, and left the court here at liberty to inquire what the intention was in requiring the oath of allegiance. Was the intention here that the appellant should have to take an oath of allegiance throughout the whole of the realm? He (his Lordship) thought that was not the intention of the oath of allegiance, and he did not think that Calvin's case (*supra*) or the cases there cited prevented them from so deciding. The decision of Mr. Justice Astbury was, therefore, right.

Another point was taken by the Attorney-General that, by the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. V., c. 17), the appellant was an alien whatever he might have been before the Act was passed. For this purpose section 27, subsection 1, was relied upon. That defined "certificate of naturalization" as meaning "a certificate of naturalization granted under this Act or under any Act repealed by this or any other Act"; "British subject" as meaning "a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted";

and "alien" as meaning "a person who is not a British subject." By virtue of these definitions the appellant did seem to be an alien by virtue of the Act, but it must be remembered that section 27, subsection 1, began with the words, "In this Act, unless the context otherwise requires," and he (his Lordship) thought that having regard to this qualification he preferred to base his decision on the point already decided without arriving at any conclusion as to the effect in this connection of the Act of 1914. The appeal must be dismissed.

BOOK REVIEWS *

Studies in the Problem of Sovereignty. By Harold J. Laski, New Haven: Yale University Press, 1918, pp. 297.

In this well printed and clearly written volume the author seeks to probe the essential character of the modern state. Sovereignty in the body politic would seem, in Mr. Laski's view, to be necessarily limited by a right to self-determination inherently possessed by various aggregations within the state whose group-wills may each, within its appropriate sphere, claim immunity, in the last resort, from the general state control. "How, then," says he at page 11, "it will be asked, is the will of the State to be made manifest? If the State is but one of the groups to which the individual belongs, there is no thought of unity in his allegiance. The answer to that is the sufficiently simple answer that our allegiance is not as a fact unified. . . . Then, it will be protested, you will abolish what lawyers mean by sovereignty. You justify resistance to the State." The author's conception of sovereignty is accurately defined at page 17 where he tells us:

When you come to think of it, the sovereignty of legal theory is far too simple to admit of acceptance. The sovereign is the person in the State who can get his will accepted, who so dominates over his fellows as to blend their wills with his. Clearly there is nothing absolute and unqualified about it. It is a matter of degree and not of kind that the State should find for its decrees more usual acceptance than those of any other association. It is not because of the force that lies behind its will, but because men know that the group could not endure if every disagreement meant a secession, that they agree to accept its will as made manifest for the most part in its law.

The conception here laid down is termed pluralistic, as opposed to a monist theory.

It recognizes the validity of all wills to exist, and argues no more than that in their conflict men should give their allegiance to that which is possessed of superior moral purpose. It is in fact an individualistic theory of the State—no pluralistic attitude can avoid that. But it is individualistic only in so far as

* The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

it asks of man that he should be a social being. In the monist theory of the State there seems no guarantee that man will have any being at all. His personality, for him the most real of all things, is sacrificed to an idol which the merest knowledge of history would prove to have feet of clay.

Mr. Laski illustrates his theme, and in a most thorough manner, by an examination of the history of the Scotch Church, the Oxford Movement and the Catholic Revival in England, and also examines with much clarity of detail the influence of Joseph de Maistre, the celebrated exponent of Papal absolutism, on the one hand, and Bismarck and the *Kulturkampf* on the other. The chapters dealing with these subjects contain much of value to the historical student. At page 208 Mr. Laski clearly characterizes his view of the importance to his subject of a consideration of certain phases of ecclesiastical history and theory:

The problem of Church and State is in reality, as Mr. Figgis has so ably argued, but part of the larger problem of the nature of civil society. To distrust the old theory of sovereignty is to strive towards a greater freedom. We have been perhaps too frankly worshippers of the State. Before it we have prostrated ourselves in speechless admiration, deeming its nature matter, for the most part, beyond our concern. The result has been the implicit acceptance of a certain grim Hegelianism which has swept us unprotestingly on into the vortex of a great All which is more than ourselves. Its goodness we might not deny. We live, so we are told, but for its sake and in its life and are otherwise non-existent. So the State has become a kind of modern Baal to which the citizen must bow a heedless knee. It has not been seen, that the death of argument lies in genuflexion.

At the close of his book, Appendix A and Appendix B (pp. 267-285), exhibit short studies of sovereignty, federalism and centralization. Touching these, Mr. Laski says:

Had he commented with any fullness upon it, the Constitution of the United States would doubtless have provoked the vehement derision of John Austin, for nowhere, either in theory or in practice, has it chosen to erect an instrument of sovereign power. We do not know who rules. Certainly the president is not absolute. Neither to Congress nor to the Supreme Court is unlimited power decreed. And, as if to make confusion worse confounded, there cut athwart this dubiousness certain sovereign rights possessed by the States alone. . . . The second method of approach is more constructive. It is the result of the view that sovereignty, rightly regarded, ought not to be defined as omniscience at all. Sovereignty is, in the exercise, an act of will, whether to do or to refrain from doing. It is an exercise of will behind which there is such power as to make

the expectation of obedience reasonable. Now it does not seem valuable to urge that a certain group, the State, can theoretically secure obedience to all its acts, because we know that practically to be absurd. This granted, it is clear that the sovereignty of the State does not in reality differ from the power exercised by a Church or a trade union. The obedience the Church or trade union will secure depends simply on what measure of resistance the command inspires. So that, on this view, when Louis XIV revoked the Edict of Nantes, when a Church issues a new doctrinal order, when a trade union proclaims a strike, all are exercising a power that differs only in degree, not in kind, from that of the State. Analyzed into its elements sovereignty is, after all, not such a very formidable thing. It is the obvious accompaniment of personality, and the main characteristic of personality is the power to will. Sometimes wills, whether individual or corporate, conflict, and only submission or trial of strength can decide which is superior. The force of a command from the State is not, therefore, bound to triumph, and no theory is of value which would make it so. . . . Certain local groups have a life of their own that is not merely delegated to them by the State. They are capable of directing their own concerns. Their interest in themselves is revived and inspired by the responsibility for such direction. When New York wants a new Constitution it can apply itself to that manufacture. . . . If Wisconsin wants an income tax it can obtain one by winning the assent of its citizens.

To the reviewer, however, the criticism or doubts of the essential unity and strength of sovereignty and its incontestable claims to obedience reflected in Mr. Laski's pages would appear to be more applicable to the Prussian State than to any political organization on this side of the Atlantic. The Constitution of the United States objectifies the political will of the American people, and while it does not erect an instrument of sovereign power, it recognizes an ultimate and irresistible *source* of power in a people's unified will. With the Prussian state theory it has no kinship. But it does rest securely upon the respect for *law* which forms so essential an element of American political consciousness. And this law is, in the last analysis, supported by a force sufficient to fully realize itself. We may well admit that if Wisconsin wants an income tax—a *state* income tax—it may have it; though it is equally true that whether or no it may want a *federal* income tax, it has it because such a measure is part of the amended national Constitution and is the supreme law of the land, and as such will be enforced.

In the days through which we are now passing, it would appear of the last importance to emphasize the unity and all-compelling force of national will directed to the purposes expressed in the

national Constitution and obviously inseparable from the welfare of every citizen and the preservation of the government under which we live.

GORDON E. SHERMAN.

The Foreign Trade of China. By Chong Su See, New York: Columbia University, 1919, pp. 451.

In the "Studies in History, Economics and Public Law" published by Columbia University, there have appeared a dozen or more valuable monographs dealing with conditions in, or relations with, China. The latest addition to this list is the substantial volume by Mr. Chong Su See dealing with the foreign trade of China.

The subject is considered historically, the first part of the volume being devoted to the period prior to 1860, and the second part to the years since that date. The year 1860 is selected as marking the end of the first period because then became effective the important Tientsin treaties of 1858 and the British and French conventions signed at Peking in 1860. In consequence of three unsuccessful wars which she had fought with the Western Powers, China now found herself bound hand and foot by treaties which not only granted extraterritorial rights within her borders to the nationals of the Treaty Powers, but placed beyond her own control the customs dues that she might levy on exports and imports. Mr. See does not state the situation too strongly when he says:

She [China] had been forced to learn the long and painful lesson that might makes right or at least enforces it, and that her independence could not be maintained save by employing the mailed fist. Up to 1834 China was the mistress of her own house; she dictated, as it was her sovereign right, the conditions on which external trade within her dominions was to be carried on. But from 1860 to the present day the whole situation has undergone a complete transformation. Since that date it has been the foreign Powers, and not China, that prescribe the terms for the regulation of the Chinese commerce—some have done it by resorting to force, and others by means of crooked diplomacy, while one has recently made use of the "friendly" ultimatum (p. 178).

The years from 1891 to 1901 were the bad years, politically, for China, but the "Break-up" which then seemed pending has thus far been averted, but no one familiar with conditions in China can escape from the conclusion that the present situation in that country is a very bad one. Indeed, the domestic demoralization has so increased

that already it has reached a point where radical improvement can be hoped for only if affirmative and truly friendly aid be extended by the Treaty Powers. The issues are thus placed squarely before the Powers: Are they sufficiently concerned with China's continued sovereignty—in substance as well as in form—to extend this aid? If this be answered in the affirmative, can a program be devised which will satisfy the interests and wishes of Japan?

Mr. See's volume covers the years so excellently traversed by Mr. Morse in his three volumes on "The International Relations of the Chinese Empire," but the interest of Mr. See is, of course, primarily with matters of commerce. Inasmuch, however, as a very considerable proportion of China's foreign relations have dealt with, or grown out of matters of commerce, Mr. See has been obliged to work over again many of the topics that Mr. Morse has satisfactorily treated. Mr. See's book, however, gives much information, statistical and descriptive, regarding China's commerce which is not contained in Mr. Morse's volumes. And, furthermore, Mr. See covers the important years since 1911, which are not treated by Mr. Morse.

W. W. WILLOUGHBY.

Experiments in International Administration. By Francis Bowes Sayre. New York and London: Harper & Bros., 1919, pp. 201. Price \$1.50 net.

The subject of international administration has been growing in importance for several years, but was never so much before the public as it is to-day when the plan of the League of Nations, which has administrative features and contemplates the concentration of various administrative unions at Geneva as the world capital, is up for discussion and in process of acceptance. The appearance of the book of Dr. Francis Bowes Sayre is therefore opportune. Although we were not without exact information on this topic before this, there was difficulty in getting quickly at the salient points of the subject; and there has always been a tendency on the part of writers in dealing with it to give mere lists of conventions, commissions, and conferences, without adding enough detail to enable the reader to understand their character and aims. For instance, one was often reminded of the Universal Postal Union, but was told very little about it. And again,

international administration in the form of unions lacked that romance of history with which the world peace movement and The Hague conferences invested international arbitration, the approach to organization on the juridical side; while an executive department of government functioning in the settlement of great controversies of the nations seemed more like a dream than a political possibility.

To read about administrative unions, therefore, was to pore over dry facts. Dr. Sayre, however, has set forth his facts in brief, clear, scientific fashion, with every topic classified in a short chapter, to which are added plenty of notes and references to documents to enable his readers to go farther than the scope of his book if they desire. He tells us of the Universal Postal Union, which is mentioned in the Covenant of the League of Nations as one of the bases of organization, and of other arrangements for common control, as, for example, the European Danube Commission, of experiments like the Cape Spartel Lighthouse, International Sanitary Councils, the administration of Albania, the Moroccan International Police, the Suez Canal Commission, the Congo Free State, the International Congo River Commission, the Chinese River Commission, the government of Spitzbergen, and the New Hebrides (a *condominium*); of the International Sugar Commission, and the principle of international river commissions, such as the Rhine Commission.

He divides these experiments into three types of executive organs from the point of view of their power: (1) international administrative organs with little or no real power of control; (2) international executive organs with real power of control over some local situation within a particular state or states; and (3) international executive organs with real power of control over all the member states themselves, placing in the last category the International Sugar Commission and the international river commissions.

He describes successes and failures with these experiments and summarizes his conclusions in his last chapter. Here he discusses, among other matters of interest, the principle of the equality of states before the law and the difficulties with the application of the principle of equality when it comes to voting on subjects of a political nature, especially where action is taken by great and small Powers, calls attention to the slowness of progress made in diplomatic conferences where the rule of unanimity in voting is observed, and expresses the belief that in future if important action is to be taken and advance

made there must be some arrangement for a majority vote. In looking towards reconstruction on the basis of experience gained in international unions, although he is conservative, he leaves one with a spirit of hopefulness in what may yet be done. It is fairly easy to get nations to agree to forms of international control over certain practical matters of common interest, such as the mail, the supervision of rivers, and the exportation of sugar; but they have been disinclined to unite in ways seriously to involve their sovereignty, although in the case of the Sugar Commission a right exists to cause the direct modification of laws in the individual treaty states.

In speaking of guarantees of enforcement, Dr. Sayre lays some failures in the past to lack of organized machinery to carry out the objects of an agreement, and evidently feels that when this is created there will be considerable difference in the results, as, for example, in the efficacy of a league that is pledged to secure and enforce peace; but though we have been lacking in executive machinery, and though its creation may make a difference in the efficacy of our peace-making, possibly he should lay greater stress than he does on such obstacles as unsatisfactory political conditions or intense imperial ambitions, and on the fact that nations which are united in a common purpose at one time may face each other on the battlefield as the expression of opposing interests at another time.

Dr. Sayre gives helpful extracts from and short summaries of portions of agreements for collective action and guarantees that are to be found in the treaties of Münster, Utrecht and Paris (1815), as well as of more recent arrangements of this kind. But to describe fully the difficulties or successes that these experiments met with would mean a far more extended treatment of the subject than he has undertaken, and in fact would mean another book altogether. Although he does not attempt to deal with the details of the Covenant of the League of Nations, an experiment which is the subject of high hope on the part of many people throughout the world, but the history of which is as yet unwritten, he leads up to it and enables us to see what has been done in unions within the field of which he treats, which is one upon which information is appreciated.

JAMES L. TRYON.

Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813.

(The growth and contents of the Netherland treaties since 1813.)

By Jonkheer Dr. W. J. M. van Eysinga. The Hague: 1916, pp. 176.

America is to be envied for possessing Moore's International Law Digest. So is The Netherlands for having at its disposal the above-mentioned book by the Leyden professor of international law.

Up till now treaties have not generally received the close attention and penetrating study they deserve as one of the chief sources of international law. Whilst some of the most important agreements between states have been carefully analyzed and commented upon, writers, as a rule, confine themselves to giving a more or less elaborate account of what perhaps may be termed the external questions to which treaties give rise, as *e.g.*, those regarding their conclusion and ratification and their relationship to national legislations. On the other hand, the more "ordinary" treaties—of delimitation of boundaries, of commerce, of extradition, to quote a few categories—are mostly dealt with in a very general way; and until this book was written, there did not exist in any country a systematic account of the contents of the treaties entered into by, and therefore part of the law of that country. For all those who have made the acquaintance of treaties in the usual way, Professor Van Eysinga's book will be a revelation, as it opens so many interesting views on a matter too often considered as hardly worth while looking at. For Dutch people it has a special interest, as it gives at the same time a full and comprehensive account of what the title justly describes as the growth and contents of the (roughly, 900) treaties entered into by The Netherlands since 1813.

The first chapter of this remarkable book deals with the growth of the complex of treaties to which The Netherlands has become a party since 1813, the year of their restoration as an independent state after the Napoleonic era. A second chapter calls attention to the fact, constantly kept in view in the rest of the book, that, although any subject can, abstractly speaking, be regulated by treaty, some matters are, as a rule, so regulated, while others seem to be preferably reserved for national legislation. This chapter also deals with the element of reciprocity in treaties.

Then, the rich contents of the treaties entered into by The Netherlands are shown in all their diversity, a diversity which demanded a system of classification. Professor Van Eysinga adopted the system which is predominant on the European Continent so far as the law of each nation is concerned, and not unfamiliar to many Anglo-American jurists. It divides the vast domain of law into four parts: private law, criminal law, constitutional law and administrative law, the latter embodying the rules which determine *how* the rights conferred upon individuals or bodies under the constitution are to be exercised.

This system, generally adopted for national legislation on the European continent, has for the first time been completely applied to international law by Professor C. Van Vollenhoven, of Leyden University fame, and, as already said, is the basis of Jonkheer Van Eysinga's book.

Thus, the first of its four remaining chapters considers those treaty provisions which clearly are of a constitutional nature, inasmuch as they invest certain bodies (existing or created for the purpose) or individuals with certain powers. Then the question is answered how, according to the Dutch treaties, the various national or international organs, either belonging to the legislative, executive, judiciary, or police, have to perform their task; there the "administrative" law as contained in treaties is considered. Two final chapters give an account of the conventional provisions falling within the domain of private and of criminal law, the former dealing with matters such as the contents of The Hague conventions on international private law, the latter with those treaty provisions by which certain acts are made criminal offences, or which refer to extradition.

E. N. VAN KLEFFENS.

Het prijsrecht tegenover neutralen in den wereldoorlog van 1914 en volgende jaren. (Prize law as affecting neutrals in the World War of 1914 and following years.) By Dr. J. H. W. Verzijl. The Hague, 1917, pp. 342.

This excellent book, as explained in the introduction, deals with the attitude of the belligerent Powers in the first three years of the late war towards neutral sea-borne commerce and traffic. It does not confine itself to a general investigation into the juridical régime of

neutral ships and neutral merchandise, but includes in its scope a consideration of the indirect ways in which the belligerent rights affected neutral interests, as, for instance, the refusal to recognize the immunity of enemy property under a neutral flag; the famous British Order in Council of March 11, 1915; the institution of "war zones" on the high seas; the treatment of neutral merchandise on board an enemy vessel when this vessel is destroyed, etc. In addition to this, it also comprises an examination of those questions which, although closely connected with the right of capture, cannot, according to the established doctrine, be dealt with by prize courts, as, for instance, the arrest of enemy subjects on board neutral ships. On the other hand, all questions of pure form or procedure in court are left aside, the author confining himself to what may be styled *substantive* prize law, embracing the main features of the juridical régime of neutral (enemy) goods on board enemy (neutral) vessels, the law of contraband, of blockade, of unneutral service, and some matters of secondary importance. However, the principal features of *formal* prize law in its stricter sense are discussed, being defined as the rules governing the exercise of the belligerent rights of arrest and of seizure of ships, and of bringing them in for adjudication by a prize court, all of which rules have to be observed before the matter is in the hands of such a court (this including questions of convoy and destruction of neutral prizes).

The fertile theme expressed in the title of the book is worked out in four chapters. In the first of them is given an account of prize law and its effect on neutral commerce and shipping in the stage which it had reached before the war, special attention being paid to the Declaration of London and to the cases in which it had been applied.

The second chapter deals with the attitude of the governments in the World War as regards prize law in general. It begins with the unsuccessful American efforts to have the Declaration of London recognized by the belligerents on both sides as determining their line of conduct in maritime warfare, and it traces the subsequent reactionary movement in matters of prize law, as embodied in a number of legal measures taken by the various governments.

Chapter III scrutinizes the legal position of the prize courts in different countries during the late war, the author basing his conclusions on the principle of the international responsibility of the state by which such courts are set up, and contrasting the German system—

wherein the prize courts are only bound by national regulations, even when these are contrary to conventional or customary international law—with the British point of view, according to which the rules of international law are supreme (except over statute law!).

In the fourth chapter the author examines the attitude both of belligerents and of neutrals towards special questions, as opposed to the more general contents of Chapter II. Here a critical account is given of what the various governments held as to the time during which the right of capture can be exercised; as to the place where, and the organs by which it can be done; and as to the things which are subject to the exercise of this right. Separate paragraphs are devoted to the legal position of submarines, to reprisals, blockade, contraband, convoy, etc. In short, an exhaustive survey is given of the way in which the rules contained in special chapters of the law of war at sea were applied.

The book is completed by a post-scriptum relating to some points that arose while the book was in the press, and lists of abbreviations and of cases cited are added.

It certainly was not surprising to see the author of this valuable book succeed Professor De Louter, whose book on "Positive International Law" is well known in and outside The Netherlands, when the latter resigned the Utrecht chair of international law:

E. N. VAN KLEFFENS.

The War with Mexico. By Justin H. Smith. New York: The Macmillan Company, 1919. 2 vols., pp. xxi, 572; xiv, 620. \$10.00.

Mr. Smith's "Annexation of Texas," which appeared in 1911, is acknowledged to be the last word upon that subject,—not, of course, as the last word in interpretation, but definitive in results gained from such an examination of the archive material as really to be exhaustive. That work was an introduction to this larger one upon the Mexican War, which now appears in two volumes, comprising over seven hundred pages of text and half as many of compact notes.

A decade or more was spent in the preparation of these volumes, and when one reads of the mass of materials examined the years of preparation we know to have been busy years. The author's intention was "to obtain substantially all the valuable information

regarding" the subject "that is in existence and no effort was spared to reach his end. . . . By special authorization from the Presidents of the United States and Mexico it was possible to examine *every pertinent document* [italics mine] belonging to the two governments. The search extended to the archives of Great Britain, France, Spain, Cuba, Colombia and Peru, those of the American and Mexican States, and those of Mexican cities. The principal libraries here, in Mexico and in Europe, the collections of our historical societies, and papers belonging to many individuals in this country and elsewhere were sifted. It may safely be estimated that the author examined personally more than 100,000 manuscripts bearing upon the subject, more than 1,200 books and pamphlets, and also more than 200 periodicals, the most important of which were studied, issue by issue, for the entire period." Nine-tenths of this material, we are not surprised to learn, was "new." Not content with paper investigations, he spent more than a year in Mexico, studying the battle-fields and, quite as important, becoming acquainted with the character and psychology of the Mexican people.

Judgment as to the causes and the occasion of the Mexican War, as well as upon its authors and supporters, was long since, indeed immediately, rendered: Whig judgment, anti-slavery judgment, and, not the least effective, literary judgment, in the Bigelow Papers. Mr. Smith's view at the outset of his special task coincided, he tells us, substantially with that prevailing in New England. He undertook the subject because he felt that it had not been studied thoroughly. So far as concerns the military side of the narrative, it will be dismissed here with the remark that those even specially interested will find the strategy and logistics of the various campaigns so carefully described and documentally checked as to render suspicious all previous accounts of them. Especially is this the case with Ripley's which Mr. Smith shows to have been an *apologia* for Polk's bosom friend, the shallow and intriguing Pillow, the better part of whose valor cannot even be dignified with the quality of discretion. One does not wonder after reading about this man that Grant, having taken his measure in the Mexican War, held him in contempt when the two were afterwards upon opposing sides.

Bearing in mind the author's prepossessions and the nature and scope of his investigations, when and how does he emerge, what conclusions does he reach? "As a particular consequence of this full

inquiry," he tells us, "an episode that has been regarded both in the United States and abroad as discreditable to us, appears now to wear quite a different complexion. . . . It is believed that new opinions, resting upon facts, will be acceptable now in place of opinions resting largely upon traditional prejudices and misinformation."

True it is that we are now in a better position than ever before to re-examine the question of the Mexican War, for, in the first place, so long an interval has elapsed since the end of the slavery conflict that we can now discuss ante-bellum matters with some degree of objectivity and detachment; and, in the second place, we have learned enough of Mexican conditions during the past ten years, if not to estimate their present situation as normal rather than the reverse, at least in the light of recent occurrences to look more sympathetically upon the policy of the United States toward Mexico from 1825 to 1846.

Distinguishing, therefore, between the causes and the occasion of the Mexican War, Mr. Smith shows that the former lay in the essentially opposite characteristics of the two nations: opposite in race, language, traditions, background, institutions, ideals, and methods. This was a matter of deeper historical foundation than could be shown in a work on the Mexican War. The fact is that since about 1810 the United States has had a southern frontier beyond which lay anarchy, except for the few years of rigid rule in Mexico under Diaz. This gives us the underlying cause of the Mexican War. The old idea that expansion to the southwest was for the purpose of extending the area of slavery is now generally discarded. Mr. Smith presents enough additional evidence in this and in his volume on Texas completely to confirm this later judgment. That the United States had long-standing grievances against Mexico, that an adventurous and hardy population breathed a spirit of national expansion, and that all resulted in war and in a consequent accession of a vast domain reaching to the Pacific, permits a judgment as to facts, possibly a judgment as to the accord of fact with "national tendencies," with "Mommson's Law," perhaps as the late Charles Francis Adams would have had us think. It may or may not, according to the point of view, involve a moral judgment. The fact that California under the American system is what it has become, while Mexico is in anarchy, hardly provides the basis for a moral judgment as to what went on in 1846. Nor does the fact that no one would now undo the work of the Mexican War provide such a basis.

The occasion for the Mexican War was a matter and opportunity for conscious choice on the part of those who were at the time responsible for the conduct of government. As to these choices and actions we have a right to a judgment in the light of the evidence. This judgment may be either political, or moral, or both. Was it expedient? Was it right? Was it both? According to the point of view one may ask, was the Mexican War the result of the annexation of Texas? Mr. Smith states that the evidence is overwhelming for an affirmative answer. One is timid in venturing to challenge his conclusion. On the face of it, however, one may be permitted to ask this question: If Polk had been willing to settle with Mexico the question of Texas without reference to further expansion [he joined the two in his instructions to Slidell in November, 1845, or earlier], could he not have done so? The ulterior motive of the Slidell mission Mr. Smith does not seem to explain away. California lay beyond and Polk wanted it. This still appears as the prime occasion of the Mexican War. The author's final conclusion is that "while ours could perhaps be called a war of conquest, it was not a war for conquest—the really vital point. We found it necessary to require territory, for otherwise our claims and indemnity could not be paid. The conflict was forced upon us; yet we refused to take advantage of our opportunity" by not taking more, and paying less than we did. "The primary law is that all shall move forward and cooperate in achieving the general destiny. Like individuals, every nation must run its course to the best of its ability, and if it grossly flags, pay the penalty. In the absence of any other tribunal war must enforce this penalty."

In justification of this conclusion Mr. Smith insists that it should be taken in the large, broad way, specifically stating: "(1), the territory was wanted in payment of what was justly due us, and therefore we could rightfully collect, and that Mexico could pay us only in land was not our fault; (2), the war was not entered into by us for the purpose of obtaining territory; and (3), it was not 'begun' by the United States." Thus Mr. Smith adopts practically *in toto* the position of Polk himself. That in a nutshell was the Polk theory, a theory which naturally leads to an inquiry as to the personal qualities of Polk. The author certainly gives us no favorable impression of Polk. He properly acquits him of the old charge of mendacity, if by mendacity one means direct lying. Further he

would have us believe that Polk was in talent if not by inclination ill adapted for intrigue. The test here is rather one of success. What must one say of the Atocha conversations, of the scheme to allow Santa Anna to return from exile into Mexico so as to make peace in accordance with Polk's plans, or of the mission of Moses Y. Beach? In the last was the strange spectacle presented of an attempt to gain our ends by means of an alliance with the clerical elements in Mexico. Farías, heroic, the "noblest person in Mexico," had to be deposed. "Who was the mysterious person, overwhelming the government of Mexico with darkness and confusion at this critical hour? He was Moses Y. Beach, agent of the American State Department and adviser to the Mexican hierarchy!" (II, 13.) Yet we are told that II, 293) "all the actors were vessels of clay, like the rest of us. But in reality the least creditable phase was the conduct of the [Whig] opposition." The Wilmot Proviso was "unnecessary and unwise." (II, 286.) Lincoln's speech against the war was an immature effort made for the purpose of "distinguishing himself before the home-folks." (II, 277.)

Mr. Smith seems to prove too much. If the United States were forced to enter a war of conquest, one wishes that the particular instrument might not have been a president like Polk, hard, narrow, suspicious, secretive, stubborn, grossly partisan, and intolerant,—yes, mean, who no doubt found his religious and predestinarian ideas a support to his state policies and not incompatible with the use of vessels of clay or baser material (Atocha, Santa Anna, Beach, Pillow), which Providence had seemed to put into his hands. To talk about natural laws in the domain of politics or of international affairs is hazardous, but if one generalization may be allowed, it is that a leader, conscious of his own rectitude, who seeks to achieve what he conceives to be his nation's destiny by means of secret diplomacy, is dangerous not only to his country but to the peace of the world. Especially so is such a leader when he wields the powers which the Constitution gives to the President of the United States.

It is not intended by the above to detract from the greater values of the volumes. Certainly what has been said was in no captious spirit, for the work is a great one. The task was seriously undertaken and conscientiously performed. The labors in the collecting and digesting of materials were enormous, the care in final preparation adequate to the long preliminary effort. One would be presumptuous to assail the accuracy of his definitive narrative, in the face of

the wealth of authorities with which, generally by citation, sometimes by quotation, the author buttresses every position taken. He has resolutely determined to be fair and open-minded. But as to his application of this rigorous determination, the reviewer cannot escape the impression that in matters of larger interpretation he has leaned over backwards. Nevertheless, this work upon the Mexican War is the most noteworthy contribution ever made. Many a long day must elapse before any one will venture upon so prolonged an excursion into the field. In every attempt Mr. Smith's work must now be the starting point. For many it will also be the terminus.

J. S. REEVES.

Le Blocus Pacifique. By Horst P. Falcke. Translated into French from the German by Ant. Contat. Leipsig: Rossberg'sche Verlagsbuchhandlung. 1919, pp. 316.

The work before us appeared in its original German text in several installments quite removed from each other, running from 1891 to the year just past, the present edition being the first entire one of these several fragments.

The author, for the first 222 pages of his publication, discusses the various affairs to which the name of "Pacific Blockade" has been attached, from the time of the Anglo-French-Russian naval intervention during the insurrection of the Greeks against Turkey in 1827, to the blockade of Vera Cruz in 1914 and of Greece in 1916-17. The details of all of these blockades are worked out by the author with a very great deal of care. We do not know any work covering the subject anywhere with completeness approaching that of the author.

The second part of the publication discusses the theory of Pacific Blockade with relation to international law, and its effects in the forms now practiced, concluding with an examination as to its probable development in the future.

It is difficult to differ from the belief so often expressed by many writers that the expression "Pacific Blockade" is a misnomer; that in point of fact an act of war is meant. In every case it is safe to say war would be the result if the party against which the blockade is directed were sufficiently powerful to risk the issue. As it is, this sort of blockade is a method simply by which a stronger party uses

its strength to its own advantage while undertaking to side-step all responsibility for unfavorable effects upon neutrals. It presents a case where the stronger takes full advantage of its strength to be judge and executor.

If the relations between nations were as civilized as they are within a community between man and man, the learning contained within this volume would be no more valuable than a treatise to-day upon the supposed rights of a master over his slave. As it is, probably we shall for a long time to come be compelled to pay attention to those aberrations of the human intellect known as the "laws of war," to which the subject-matter of this volume has a close relation. Pending, therefore, the arrival of mankind at a state of real civilization, internationally, this work will have a value to its readers.

JACKSON H. RALSTON.

Mein Kriegs-Tagebuch. Volume II: *Das zweite Kriegsjahr.* By Alfred H. Fried. Zurich: Max Rascher Verlag. 1919, pp. 384.

The second volume of Dr. Fried's war diary coincides with the second year of the war. All the entries of this volume were made in Switzerland. It seems to have been his intention to go to Berlin in order to continue in person the publication of the *Friedens-Warte*, but the war spirit had become so bitter there that his friends feared for his safety and the plan was relinquished. Indeed, the publication was soon suspended in Germany and reestablished in Zurich because of the ever-increasing excisions by the censor. German writers accused it of being subsidized by the Entente (p. 248). However, it seems to have had a wide circulation in Germany and Austria even after its removal, because the author gives us the running fire of controversy kept up in German newspapers upon articles written by himself, F. W. Foerster and others. Though a pacifist, he is never averse to a battle of the pen, and strikes out bravely against his enemies. Indeed, he points out that the pacifist ideal is not to eliminate strife, certainly not the conflict of opinion, but only armed conflict between nations, which leaves all nations the poorer (p. 156).

What interests us most in these sketches is the author's method. Some striking event occurs, the bombing of Karlsruhe, for example. It is recounted at length by some German writer with comments on

"its purposeless cruelty." Fried uses the moment to recall statements and opinions made only a short time before, upon a similar occasion, when the bombing of Bar-le-Duc or Paris, as the case may be, was "justified" by persons in high places upon grounds which would now apply with equal force *mutatis mutandis*. Usually Fried's own warnings published at the time of the prior event are worked into the narrative. It thus becomes quite manifest why Fried was not unusually popular among his people at this time! And yet there is not the slightest malice in his discussions. He finds this method useful because he thus forces attention upon what he calls "the logic of things," the final victory of which over the evil will of man, sustains him in the hour of greatest trial (p. 18).

The leaders of the Ford expedition reached Switzerland in February, 1916. The author gains an unfavorable impression and characterizes the movement as "vague dilettantism" which may do more harm than good (p. 200). He decries, however, the mocking tendency of the press and believes that while the destiny of Europe is at stake, it is indeed a grim form of humor which seeks amusement from a sincere will to peace. In this connection he refers to an unpublished letter of Baroness von Stutner, written to him in 1912, in which she predicted the coming of a world war and admitted that she had sought an American multimillionaire with sufficient understanding of the pacifist movement to help her avert it. She sought to enlist Mr. Morgan, but without success. Mr. Ford would have been her ideal, but the author doubts whether in 1912 she would have had any greater success with him than with the others (p. 213).

The author discusses the significance of America's entry as an interested party, although actual intervention was still one year off. He analyzes the *Sussex* note and Germany's reply. He approves of Germany's offer to submit the issue to the Hague Court for arbitration, and points out the importance which the dilatory method of settling international disputes will have after the World War (p. 263). Neither does he fail to add in another connection (p. 275) that the suggestion would have had real value only if Germany had accompanied it with an offer to suspend her submarine methods until the court's final decision. He sees that a new element has entered the contest, and he warns of the danger in the campaign of detraction which had set in against President Wilson's addresses and messages. He correctly sees that the German *Weltanschauungen* were so diamet-

rically opposed to these as to constitute an irrepressible conflict. "It will then remain to be seen which is of clay and which of iron" (p. 311).

ARTHUR K. KUHN.

The Recommendations of Habana Concerning International Organization. Adopted by the American Institute of International Law at Habana, January 23, 1917. Address and Commentary by James Brown Scott. New York: Oxford University Press, American Branch. (Publication of the Division of International Law of the Carnegie Endowment for International Peace.) 1917. pp. 100.

On the proposal for a permanent court of international justice, Dr. James Brown Scott writes with persuasive power. It is safe to say that no other American of our time has pursued this great idea so persistently, written upon it from so many points of view, or shown such genius as he in rallying the forces of scholarship to its support. Developed primarily through international arbitration from the days of Washington, through a succession of Presidents and Secretaries of State, including Mr. Root, who, with the United States Supreme Court in mind, gave it new form in his instructions to the delegates to the Second Hague Conference, this idea became a political possibility when that body in its Final Act approved the Court of Arbitral Justice. From 1907, the date of that act, the proposed court has been associated with the name of Dr. Scott. He helped to elaborate the details of its constitution at The Hague, to which he was a technical delegate, explained it before conferences of publicists in this country, and in Europe, where it received approval, advocated it in this JOURNAL, urged it upon the attention of our Department of State, and was on the point of seeing it practically instituted by diplomatic action when the outbreak of the war made new plans for reconstruction necessary. Dr. Scott then adapted the plan to what he believed to be the new needs of the nations in a way that might meet with their acceptance. In his proposed reconstruction he made the court the central feature of a judicial union. This partial kind of union or federation is, in the judgment of many statesmen, the farthest point of advance that can be safely made at the present time. But the court was not lost sight of at Paris, to which Dr. Scott went as an adviser in the early days of the Peace Conference; for it was given a place in the Covenant of the League of Nations, although

in that league the executive department rather than the court appears to be the more important branch of the form of international government to be established.

The Recommendations of Habana Concerning International Organization were made unanimously by the American Institute of International Law on motion of its president, Dr. Scott, at its second annual meeting held at Habana in January, 1917. The institute is a society of publicists, jurists and statesmen, some of whom are judges of the Hague Court, selected from the Pan-American Republics, and therefore is a body of distinguished authority. The suggestions offered are briefly stated; they were not made as the draft of a treaty or developed as a project complete in details, but put forth as a series of propositions to serve as a minimum basis for a discussion of the problem of reconstruction. Assuming, as was appropriate in 1917, when the war was still in progress, that all the nations of the world will from the outset be members of any union that shall be formed after the peace is made, the American Institute of International Law proposes the calling of the Third Hague Conference, to which all nations shall be invited, but in which no one of them shall of right have a preponderating part; the holding of periodic conferences at The Hague as a law-recommending, perhaps eventually as a law-declaring, body; an agreement on international parliamentary procedure; the appointment of an executive committee to secure the ratification and observance of international conventions; an understanding upon the fundamental principles of international law in accordance with the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law in Washington in 1916, which harmonizes with British and American court decisions; the creation of a council of conciliation, the employment of good offices, mediation, and friendly composition for disputes of a non-justiciable nature; the resort to arbitration for justiciable cases which owing to special circumstances have become unsuitable for submission to a court; the formation of a judicial union shaped along the lines of the Universal Postal Union, with a permanent court of this union to which differences involving law and equity may be submitted, and whose decisions will be binding not only on the litigating nations but also on all parties to the creation of this union; this system to be supported by what is termed "an appeal to that greatest of sanctions, 'a decent respect to the opinions of mankind.'"

These propositions are elucidated in a spirit of modesty in an extended, but not exhaustive, commentary by Dr. Scott, but they carry with them the weight of considerable confidence because they are an expression of the historic continuity of the world peace movement in its efforts to bring about the reorganization of the society of nations, bring forward the development of The Hague Conferences in a normal way, and make use of the plan of the Universal Postal Union, which the nations have already adopted in one great department of international activity. The commentary is strengthened in places by apt quotations from Leon Bourgeois and Mr. Root, as well as by reference to policies of the United States as exemplified by the Bryan treaties for the advancement of peace, which are made a precedent for an international council of conciliation.

If by any chance the plan of the League of Nations, the fate of which is in doubt, should fail of ratification and the question of reconstruction be opened again, the Recommendations of Habana Concerning International Organization, with their claim of historic continuity, would deserve first attention as a substitute, and would be the natural starting point in this country, if not in the world, of the next great attempt at reconstruction. This movement would mean coöperation and peace with justice, and it would offer a distinct advantage which many people think that the Covenant has lost; it would leave to the nations their independence and sovereignty in all essentials absolutely secure.

But in any event these proposals, embodying the experience of the past and deriving much of their strength from that fact, are made available, together with an authoritative commentary, in book form, which can be easily mastered. They are preceded by an address by Dr. Scott which deals with the Platt Amendment. This address, delivered before the American Institute of International Law in Habana, has about it a fraternal, optimistic spirit and must have been enjoyed by its Latin American auditors. It contains valuable information on the origin and observance of the amendment; it increases our faith in the ethical standards of the United States, which is true to promises made to Cuba; and, in these chaotic days when differences over details and methods tend to divide us, it encourages us to hope that the sense of international solidarity which was demonstrated at The Hague will, in spite of all delays and disappointments, be eventually established in fundamental law.

JAMES L. TRYON.

Institut Américain de Droit International. Acte Final de la Session de la Havane. (Deuxième Session de l'Institut) 22-27 Janvier 1917. Résolutions et Projets. New York: Oxford University Press, American Branch, 1917, pp. 129.

This work, as its title indicates, contains the Final Act of the second session of the American Institute of International Law, which was held at Habana, Jan. 22-27, 1917. Before the Final Act come lists of bureau, council of direction, founders, titular and corresponding members of the society, so that we know from the start that it represents views of distinguished authorities. The Final Act comprises the "Recommendations of Habana Concerning International Organization," projects and questionnaires on the fundamental bases of international law in general, and international law as applied to the American continent in particular; rules of neutrality in maritime war, the organization of a court of arbitral justice, a continental union or council of conciliation, to be sent to the various societies of international law in the Americas, some *vœux* one of which expresses sympathy with the Central American Court of Justice and recommends its maintenance as a guarantee of peace between the republics of Central America; and resolutions favoring the policy of holding annual sessions of the Institute in cities of different American nations, the first invitation accepted being that of Uruguay to meet in Montevideo.

In appendices which fill the larger part of the book may be found the commentary of Dr. James Brown Scott on the "Recommendations of Habana Concerning International Organization," which is rendered into French; an exposition of plans for the reconstruction of international law in general and of the American continent in particular, which is the work of Dr. Alejandro Alvarez, the Secretary General of the American Institute of International Law; an extended outline of rules of neutrality in maritime warfare, together with references to sources of authority under nearly every article; the bases of organization for a court of arbitral justice, by Dr. Scott; an explanation of ideas underlying the proposal for the creation of a continental union or council of conciliation for the American continent, by Dr. Alvarez, together with the *projet*; and an analytical statement of the fundamental rights of states. It is evident that neutrality has occupied an important place in the thoughts of jurists of Pan America

since the outbreak of the European War, and the outline on it that is here presented will be helpful to all persons interested in the revision of laws on that subject. Reference to Dr. Scott's illuminating and valuable commentary on the "Recommendations of Habana Concerning International Organization" has been made in another review,¹ the commentary adds value to this book and, rendered into French, will reach new readers in other countries who ought to see it.

The work of Dr. Alvarez as editor of the publication and as interpreter of some of the *projets* presented deserves appreciative mention. This eminent publicist has a strong grasp of principles and an instinctive insight into international problems of a legal or constitutional character. Briefly but carefully he analyzes the complex situation, and makes distinctions in kinds of law that help the reader to understand what form the reconstruction may take, and by what considerations it may be limited. These studies show the value to publicists of this country of association in a common task of men in the different nations of the American continent, and of the attempt to come to an understanding in matters of common legal interest to them, as there is a development of international law that in a certain sense is characteristic of our part of the world.

Dr. Alvarez in his study of phases of a proposed continental union or council of conciliation, which might possibly be extended and made universal, examines the platform of the League to Enforce Peace as the foundation of a league of nations plan, and singles out certain points of difficulty with which it has already met in discussions. Speaking of the American Republics, he raises an objection to permitting pressure to be placed upon them by the Great Powers of Europe; for although the states of this hemisphere have developed under the influence of European culture, they prefer to continue under the usual conditions of freedom that they have enjoyed. Although he recognizes the right to resort to force as a principle already found in the Convention on the Limitation of Force in the Collection of Contractual Debts, he is disinclined to believe in the efficacy of machinery for international enforcement in the face of the diversity of interests that prevail between the different countries of the world or groups of them, as well as the absence of interests that are the same for all of them which they would have a natural incentive to support by force. Europe and America being unlike in interests as a

¹ See preceding review.

whole, would find intervention mutually disagreeable. He thinks, therefore, that the American states will coöperate in securing an equitable settlement of the problems of the World War, but will not go beyond facilitating the peace negotiations. Whether this view is justified we shall learn in days to come, but it might be considered by statesmen who, to secure permanent peace, lay stress upon the efficacy of the machinery of an international constitution rather than upon favorable conditions for peace in the international situation.

In the extension of The Hague system and of administrative unions Dr. Alvarez places confidence, and suggests that in a measure pacific understanding in the future may be brought about between the rival groups of the European nations by an attempt at mutual approach through such group organizations as have resulted from the necessities of united action in the war. For states of Pan America, with ties of a political, economic, juridical, and scientific character in process of forming, he suggests an organization modelled on a great confederation or federation, to be adapted, however, to such differences as are due to the jealousies that republics show of their independence and sovereignty, which must not be infringed; and here the object ought to be to secure, if possible, solutions of differences by pacific means and with a very limited amount of pressure, if that should be necessary. For continental or universal use, if that be possible, a union or council, of conciliation, might be practical, but it should be formed on a juridical rather than a political basis, the council to be composed, not of ambassadors who are likely to represent national policies, but of a detached body of competent men who, acting under limitations as to initiative, might help in the solution of certain disputes that diplomacy cannot settle; and a court of arbitral justice for the adjudication of legal questions, the solutions advised or the judgments rendered to have primarily a moral sanction, but when moral, economic and material pressure should prove insufficient, in cases of bad faith, by special arrangement the support of force.

JAMES L. TRYON.

Tratado de las Leyes y de Dios Legislador. Por el Padre Francisco Suárez. Translated into Spanish by Don Jaime Torrubiano Ripoll. (Clásicos jurídicos, Vol. I.) Madrid: Hijos de Reus. 1918, pp. lxiv, 320.

James Lorimer, in his "Institutes of the Law of Nations,"¹ calls attention to "the extreme injustice of the manner in which, down to our own time, it has been customary to speak of the scholastic jurists," and a little farther on he continues: "The fact is, that ever since the Reformation the prejudices of Protestants against Roman Catholics have been so vehement as to deprive them of the power of forming a dispassionate opinion of their works, even if they had been acquainted with them, which they rarely were." The same author, in a footnote, gives expression to the belief "that no more valuable contribution could be made to the literature of jurisprudence at the present time than a collection and translation of the portions of these works which have reference to general jurisprudence and international law." But these statements were made nearly forty years ago, and the injustice and prejudice, on the one hand, have largely disappeared, while interest in popularizing the translations of relevant portions of the works mentioned has long since been aroused by Prof. Ernest Nys and by the "Classics of International Law" being published by the Carnegie Endowment for International Peace, under the general editorship of Dr. James Brown Scott, and now by a new series of *Clásicos jurídicos* inaugurated by the publishing house of Reus with the present volume.

The selection of the Spanish Jesuit, Francisco Suarez, as the first author in the series is a most happy one, for the echoes of his tercentenary celebration have not yet entirely died away. Attention which had hitherto been confined to a few historians of international law such as Ward, who calls him "a writer of great perspicuity and comprehension of mind,"² and Hallam, who regards him as "by far the greatest man in the department of moral philosophy, whom the order of Loyola produced in this age, or perhaps in any other,"³ was

¹ James Lorimer, "The Institutes of the Law of Nations" (London, 1883), Vol. I, p. 71.

² Robert Ward, "An Enquiry Into the Foundation and History of the Law of Nations in Europe" (London, 1795), Vol. I, p. 16.

³ Henry Hallam, "Introduction to the Literature of Europe in the Fifteenth, Sixteenth and Seventeenth Centuries" (London, n. d.), p. 524.

now more popularly centered upon him, and especially did his native country hasten to make tardy amends for the oblivion into which one of the purest glories of its history had been allowed to fall.

This newly aroused interest, however, should by no means be permitted to be local, for Suarez should be universally recognized as one of the truly great founders of international law, second perhaps only to the great Grotius, if indeed to him. In fact, there is little or nothing new in Grotius's general treatment of his subject; his system is fundamentally identical with the ideas outlined by Suarez.⁴ It is true that Grotius advanced far beyond all his predecessors in the detailed elaboration of his principles, but the fact nevertheless remains that "Suarez has put on record with a master's hand the existence of a necessary human society transcending the boundaries of states,⁵ the indispensableness of rules for that society, the insufficiency of reason to provide with demonstrative force all the rules required, and the right of human society to supply the deficiency by custom enforced as law, such custom being suitable to nature."⁶ And therefore "it is rather remarkable," as Ward notes, "that in his survey of the writers who preceded him, he [Grotius] makes no mention of Suarez, the clearest of all those who had attempted to discuss the law of nature, and the difference between it and the Law of Nations,"⁷ although it is true that Grotius elsewhere⁸ recognizes in him one of the greatest theologians and a profound philosopher.

Francisco Suarez was born at Granada on January 5, 1548, not quite a year and a half after the death of that other scholastic glory of Spain, Franciscus de Victoria. In 1564 he entered the Society of Jesus at Salamanca, where he studied philosophy and theology from 1565 to 1570. Ordained to the priesthood in 1572, he taught successively and most successfully at Avila, Segovia, Valladolid, Rome (1580-1585), Alcalá (1585-1592), Salamanca (1592-1597), and finally Coimbra (1597-1616). He died on September 25, 1617, but in the short space of twenty-three years (1590-1613), he wrote and published twelve extensive and important works on theological and

⁴ Cf. Thomas Alfred Walker, "A History of the Law of Nations" (Cambridge, 1899), Vol. I, p. 330.

⁵ Cf. *ibid.*, p. 156.

⁶ John Westlake, "Chapters on the Principles of International Law" (Cambridge, 1894), pp. 27-28.

⁷ Ward, *op. cit.*, Vol. II, p. 614.

⁸ Hugo Grotius, *Ep.* 154, *J. Cordesio*.

philosophical questions, as well as composed seven other works published posthumously, the last at late as 1859.

Although there is much of interest from the point of view of international law in the other works of Suarez, such as his *De bello*⁹ which constitutes Disputation XIII of the posthumous treatise *De charitate*, his complete legal system is to be found in the *De legibus ac Deo legislatore*, published in 1612 (five years before the author's death) at Coimbra, where he held the chair of theology in the university. The work is divided into ten books, of which only the first appears in this volume, and, as the publishers say, for the first time in Spanish. It is presumed that the other nine books are to follow. An idea of the comprehensiveness of the entire work may be gleaned from the following titles of the ten books:

- Book I—On law in general, its nature, causes and effects.
- Book II—On eternal law and natural law and the law of nations.
- Book III—On positive human law in itself, and as it can be considered in the pure nature of man, which law is also called civil law.
- Book IV—On positive canon law.
- Book V—On the variety of human laws, and especially on adverse law.
- Book VI—On the interpretation, cessation and mutation of laws.
- Book VII—On unwritten law, which is called custom.
- Book VIII—On favorable human law, or that which grants privilege.
- Book IX—On the old positive divine law.
- Book X—On the new divine law.

The translation of the book appearing in the present volume was begun on January 17, 1918; the printing was begun on April 1, 1918, and the volume issued from the press the latter part of September of the same year. The rapidity of preparation and execution may possibly account in some measure for such minor defects as will be noted below, but on the whole the book leaves little to be desired. A brief but interesting preface from the facile pen of Don Rafael Conde y Luque, Associate of the Institut de Droit International, Rector and Professor of International Law at the Universidad Central de España, is followed by some important remarks and bio-bibliographical notes of the translator.

In his remarks the translator indicates two possible systems of translation: first, a free translation of the idea in good stylistic vernacular, and second, as literal a translation as is consistent with

⁹ This work and relevant portions of the *De legibus* will appear in text and English translation in the Classics of International Law.

grammatical correctness of vernacular. After weighing the advantages and disadvantages of both systems, he inclines—and we think very wisely so—to the second method as the ideal for works of a “rigorously scientific character,” such as the present work, although not for works of a purely literary character. He tells us that he has already tested the second method in his translation of Franciscus de Victoria, but that Suarez presents additional difficulties because of his more obscure style and the highly technical language which accompanies his profound reasoning. Consequently, it may be necessary for the reader to go over some passages two or three times before securing a proper understanding. “I have undertaken,” he says, “to write for savants and students, surely not for the curious; and so I have preferred to hide my shortcomings behind the rough scholastic forms of the great master to running the risk of having the reader distrust the fidelity of my translation, which is desirable in this class of works above all other embellishments and above *first* clearness, that is, the clearness of the *first* reading or at first sight.”

The edition translated is that printed at Naples in 1872, although it might have been wiser to have selected as the basis of translation the last edition known to have come under the scrutiny of the author, with the correction of only the manifest errors. The motive of the translator, however, may have been to select a good modern edition fairly accessible to the prospective readers of his translation. For the purpose of facilitating the proof of the translator's accuracy, the number of the page and column of the corresponding part of the original text is inserted in the upper left hand corner of each page of the present volume.

As a test of the accuracy of the translation, the reviewer carefully checked up the first twenty pages, word for word, with the Latin text as published at Mainz in 1619, and is happy to state that he found the translation extremely smooth and intelligible and noticed no error of importance.¹⁰ Several omissions have been noticed throughout the book—for example, on pp. 2, 16, 17, 32 and 151—but this may be in keeping with a statement in the Preface, that “in

¹⁰ In the last line on p. 3, it might be more in keeping with the spirit of the syllogistic argument to have *pero* in place of *y*. On p. 15, in the quotation from *Romans*, ch. ii, v. 13, the translation for the word *justificabuntur* is missing. On the bottom of p. 16, there is a slightly twisted translation of a sentence which would appear in English somewhat as follows: “The rules of correct speech are wont to be called laws of grammar,” etc. On p. 19, line 19, *naturalmente* should be *moralmente*. Eight lines farther on, *y* should be deleted.

translating the language and dialogue, the text has been relieved of many paraphrases and redundancies which obscure the thought and embarrass the course of the argument." This procedure, however, has little to commend it, and is subject to very serious criticism.

Because of the abundant citations found in Suarez, due to his erudition in matters juridical, patristic, historical, bibliographical, theological and philosophical, it had been the translator's original intention to give a bio-bibliographical account of each author cited and to run down references to the canon and civil law texts, as well as to explain scholastic phrases and terminology. But he soon learned that this would have required four or five additional volumes for the entire *De legibus*, and so the last half of the book contains very few notes of any kind. However, there still remains in the first part a valuable list of commentators on the various parts of the *Corpus Iuris Canonici*, besides good accounts of Plato, Aristotle, Clement of Alexandria, St. John Chrysostom, St. Augustine, Isidore of Seville, Peter Lombard, St. Thomas Aquinas, Cajetan, Alexander of Hales and Juan de Torquemada. Citations in the text are, as a rule, left in Latin, as most of the Latin works cited have not been translated, and many are not likely to be for some time to come. There does not seem to be any attempt at uniformity of abbreviation of citations. The *Digest* is sometimes cited as such, sometimes by the well-known *ff.*, and there are three different abbreviations for the *Institutes*. The various titles of the *Corpus* are likewise variously abbreviated.

As suggested above, the hurriedness in printing the book was probably responsible in large measure for the numerous misprints and the great confusion in the orthography of Latin words which correspond to similar Spanish words.¹¹

¹¹ The most important misprints noted are the following: 1691-92 for 1601-02 and 1691-93 for 1601-03 (p. xlv), 1659 for 1859 (p. li), *Crescomium* for *Cresconium*, *gestione* for *gestis* (p. 23), *Beviculus* for *Breviculus* (p. 24), *Caterias* for *Categorias*, *Toscorum* for *Stoicorum*, *Sylbug* for *Sylburg* (p. 26), *Heilberg* for *Heidelberg*, *Herbetus* for *Hervetus*, *Wutzburgo* for *Wurzburg*, *Kloft* for *Klotz*, *Pentatenchi* for *Pentateuchi*, *virtutuuum* for *virtutum* (p. 27), *Batone* for *Botone* (p. 46), *Liguano* for *Lignano*, *Aucarano* for *Anoarano* (p. 47), *Perisiense* for *Parisiense* (p. 89), and *Panarmitano* for *Panormitano* (p. 182). The frequency with which Latin words are misspelled may be judged from the following list: *omnnibus*, *Defensasio*, *inteligentia*, *mendatium*, *mayor*, *Academiciae*, *amittitia*, *Lelius*, *juditia* and *comentaria*. Several instances of incorrect division of Latin words at the ends of lines are to be found, e. g., *quaes-tiones*, *appel-lationes*.

With regard to the typographical appearance, the book is, on the whole, very attractive. The frontispiece, however, does not seem to be commensurate with the standard demanded by the subject, the author, or the series. The summary at the beginning of each chapter is very useful, but its repetition in the Table of Contents or "Indice" not only seems needless, but is destructive of the very purpose of such a table by expanding into nine pages what could and should appear in two. Moreover, space could have been saved, which seems to be badly needed in the latter part of the book, where we find chapters beginning in the middle of pages (*e.g.*, pp. 203, 207 and 279) instead of beginning new pages as in the first part of the book. All of these defects can easily be remedied in future volumes of the series.

The publishers, the sponsor and the translator are to be earnestly congratulated on this auspicious beginning, and if the present volume may be taken as an augur for the future, they may rest assured of the success of their undertaking. The book should lend new zest to those who are interested in the scholastic jurists; those who are not yet interested in those pioneers of pioneers would surely be attracted by the inspiring preface, and "they would doubtless be surprised by the following declaration of an humble religious, submitting to the precept of blind obedience: 'Before all I can affirm, as I shall always affirm, that my one ambition, which I have endeavored to realize without flinching in the face of any labor or effort, has always been to know and to make known the truth and nothing but the truth. A partisan spirit has never inspired, and never will inspire, any of my opinions. I have never sought anything more than the truth, and I desire that those who read my books should seek it in their turn.'"¹²

HERBERT F. WRIGHT.

¹² Francisco Suarez, *De Verbo Incarnato*, quoted in the Preface, p. xxiii.

PERIODICAL LITERATURE OF INTERNATIONAL LAW.

[For table of abbreviations, see p. 240]

- Alien Enemies.** Alien enemy-partnership rights. A. L. Sherry. *Cornell L. R.*, 4: 191. June.
- . Effect of war on right of alien enemy to sue and be sued. *Minn. L. R.*, 3: 351. April.
- . German property in Allied countries. *Cur. Hist.*, 11 (Pt. 1): 105. Oct.
- . Status of alien enemies in courts of a belligerent. *Harvard L. R.*, 32: 737. April.
- . Trading with the enemy act. C. H. Hand, Jr. *Columbia L. R.*, 19: 112. April.
- . War, alien enemies; property subject to seizure; effect of war upon power of attorney. *Minn. L. R.*, 3: 434. May.
- Arbitration.** Evolution of peace by arbitration. W. E. Baff. *Am. L. R.*, 53: 229. April.
- Arrests.** Des arrestations au cas de venue involontaire sur le territoire. Maurice Travers. *R. de dr. int. privé et de dr. pénal int.*, 13: 627.
- Bessarabia.** Bessarabia's charges against Roumania. *Cur. Hist.*, 11 (Pt. 1): 293. Nov.
- Blockades.** Essai d'une théorie des blocus nouveaux. Jean Alessandri. *R. gen. de dr. de la legis. et de la juris.*, 43: 69.
- Congress of Vienna.** Peace (The) of 1814-1815. Harold Sperder. *Cur. Hist.*, 11 (Pt. 1): 147. Oct.
- Continuous Voyage.** Doctrine of continuous voyage. W. C. Eliot. *St. Louis L. R.*, 3: 227.
- Contracts.** Wartime impossibility of performance of contract. A. D. McNair. *Law Q. R.*, 35: 84.
- Convoy.** Dutch convoy. H. L. Bellot. *J. of Comp. Legis.*, 18: 260.
- Courts.** International tribunals in the light of the history of law. R. Gray. *Harvard L. R.*, 32: 825. May.
- Crimes.** Liability for official war crimes. C. A. Hereshoff Bartlett. *Law Q. R.*, 35: 177. April.
- European War.** Oostenrijksche vraagstuk vóór en na wereldvorlog. Berthold Molden. *De Gids*, 1919: 126.
- . Origin of the World War. Minutes of a historic council. *Cur. Hist.*, 11 (Pt. 1): 455. Dec.
- Ex-Kaiser Wilhelm.** Ex-Emperor (The) and the Napoleonic precedent. Norwood Yound. *19th Cent.*, 86: 575. Sept.
- . Extradition of the Kaiser. *Lawyer & Banker*, 12: 573.

- Ex-Kaiser Wilhelm.* Judicial reckoning for William Hohenzollern. O. Erickson. *Law Notes*, 22:184.
- . Legal liability of the Kaiser. G. Wright. *A. P. S. R.*, 13: 120.
- . Status of the Kaiser. C. E. George. *Chicago Legal News*, 51: 227.
- . Trial of ex-Kaiser. *Va. L. Reg.*, 4: 937. April.
- Far Eastern Question.* Nos alliés d'extrême-Orient. A. Gérard. *R. gen. de dr., de la légis. et de la juris.*, 43:131.
- Fiume.* Italy's rights across the Adriatic. Alessandro Sapelli. *Cur. Hist.*, 11 (Pt. 1): 258. Nov.
- Foreigners.* Propriedad (La) rail de los extranjeros en Mexico. G. Fernandez MacGregor. *R. Mex. Dr. Int.*, 1: 28.
- Freedom of the Seas.* Freedom of the seas. *Canadian L. J.*, 55: 77.
- . Freedom of the seas. *Lawyer & Banker*, 12: 437.
- . Freedom of the land and freedom of the seas. Theodore S. Woolsey. *Va. L. Reg.*, 4: 738.
- . Grotius and the freedom of the seas. W. S. M. Knight. *J. of Comp. Legis.* (3rd Ser.), 1:106. April.
- . Libertad (La) de los mares. José de Villalonga Ibarra. *R. general de legis. y jurisprudencia*, 134: 115.
- . Que se entiende por libertad de los Mares. Arthur G. Hays. *R. Mex. Dr. Int.*, 1: 161.
- . Sea law and sea power. G. Bower. *Am. L. R.*, 53: 25.
- Germany.* Constitution of the German Republic. Text *Cur. Hist.*, 11 (Pt. 1): 86. Oct.
- . Doctrine (La) allemande de l'auto limitation de l'Etat. Léon Duquitt. *R. de dr. public*, 36: 239.
- . Evidences of Germany's guilt. Louis Barthou. *Cur. Hist.*, 11 (Pt. 1): 78. Oct.
- . General Ludendorff's memoirs. *Cur. Hist.*, 11 (Pt. 1): 263. Nov.
- . German (The) collapse. History of the peace offer. *Cur. Hist.*, 11 (Pt. 1): 106. Oct.
- . Germany as a full-fledged republic. *Cur. Hist.*, 11 (Pt. 1): 78. Oct.
- . New (The) government of Germany. Walter James Shepard. *A. P. S. R.*, 13: 361. Aug.
- . Nouveau (Un) peril allemand. General Cottez. *R. Mondiale*, 132: 206. Aug.
- Greece.* Mision (La) del Sr. Jonnart en Grecia. Raymond Reconly. *R. Mex. Dr. Int.*, 1: 107.
- Grotius.* Grotius legend. *Canadian L. T.*, 39: 277. May.
- Haiti.* Haiti and the American occupation. Francis Dalencour. *Cur. Hist.*, 11 (Pt. 1): 542. Dec.
- Holland.* Holland's international policy. C. van Vollenhoven. *Pol. Sci. Q.*, 34: 193. June.
- International Labor Conference.* International labor conference. *Cur. Hist.*, 11 (Pt. 1): 431. Dec.

- International Law.* Acta de la instalacion de la Academia Mexicana de derecho internacional. *R. Mex. Dr. Int.*, 1: 169.
- . Application (L') en droit international de la legislation de guerre. H. E. Barrault. *R. gen. de dr., de la legis. et de la juris.*, 43: 129.
- . Enforcement of international law through municipal law. *J. of Comp. Legis.* (3rd Ser.), 1: 99.
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KATHRYN SELLERS.

THE NEUTRALITY OF CHILE DURING THE EUROPEAN WAR

BY BELTRAN MATHIEU

Ambassador of Chile in the United States of America

THE FIRST PERIOD OF THE NEUTRALITY OF CHILE, PRIOR TO APRIL 6, 1917

If the neutrality of Chile be considered with calm judgment in the light of historical reality, it offers no occasion for surprise during the period that extended from the breaking out of the European War until the date at which the United States entered it as a belligerent, that is, from August, 1914, until April, 1917. It is in no wise surprising, I say, since the unneutrality of Chile would be inconceivable at that stage of the war, owing to the circumstances that existed at the time in our hemisphere. Beginning with the latter date, the neutrality of Chile, if, indeed, much less onerous, stands out as a more significant fact, because several of the Latin-American countries "theoretically" adopted the attitude of the United States by declaring war upon the German Empire, while another group of these countries confined itself to breaking off diplomatic relations with that Power. Of the five republics that maintained their neutrality until the end, Chile was, without doubt, the one that had to show greater zeal to keep within the law and to retain the confidence that had always been reposed in her by the most powerful nations of the world.

I have said that the neutrality of Chile, up to April 6, 1917, does not constitute a strange historical phenomenon, because the entire American continent decided frankly in favor of neutrality from the breaking out of the war. No authority upon international law could condemn this attitude by germane arguments, nor would all the eloquence of sentiment possess weight against it.

The whole of America recognized that the situation of Europe was then almost unbearable because of the political and military rivalries of the great nations, and as a direct consequence of former wars that had produced what Lord Grey called "a peace of iron" and what Léon Bourgeois called "a peace without justice." The conflict was

not a mystery, but, rather, a certainty. It was a subject discussed with freedom in books and newspapers, even in the countries that cherished no sanguinary designs. Manifold proofs of the fact were offered by crises weathered with difficulty—thanks, at times, to generous sacrifices on the part of France, and, at others, because of the want of an aggressor.

What was not within the range of human prevision was the brutal manner in which the catastrophe was to be precipitated, its magnitude, its duration or its transcendency. At the outset, it was the general opinion that the war would be short, and therefore its disasters proportionate. It was never supposed that the combined efforts of all the great armies of the world, all its enormous available financial strength and all its sources of production—to say nothing of mortgaging the future—would be necessary to bring it to an end. That there might be an urgent need, consequently, of theoretical aid, not to mention even less, the positive aid, of the Latin-American peoples in behalf of the Allied cause, had not crossed the mind of any statesman of Europe or America.

The Powers that controlled the seas were well aware that the products of the American continent were at their disposal, and they also knew, without any express declaration, that English and French influence was already old in Latin America when German influence began its work. European literature prior to 1917, even the most impassioned, was not disturbed by the neutrality of Latin America. It was so easy to argue in favor of that neutrality and to explain it as something logical; and it would have been so unthinkable to claim that it was our duty to follow, without a peremptory cause, the fate of one of the belligerents, that no one took an interest in solving this perfectly obvious problem.

On the other hand, beholding the reality of events, it would have been folly to suppose that weak and defenseless nations would expose themselves to the attacks of a powerful enemy, at a period in which the belligerent squadrons of Europe still sailed the remote seas in strife for the control of them. It would have been a boastful and foolish act for any of our countries, moved by the impulse of a chivalry without precedents in the history of the world, to declare war upon Germany while that empire still maintained its fleets of armed vessels along our coasts. To have engaged in such an adventure while the one great nation of America did not do so, simply

because grounds had not accumulated and because she did not possess the effective resources to give value to the act, would have signified that there existed in America no kind of international political equilibrium, inasmuch as any country was able to disturb it, with serious consequences. Admitting this hypothesis, a German naval division might have been able to begin hostilities upon the diminutive belligerent, and then the United States would have felt itself called upon to apply the Monroe Doctrine by mobilizing her navy, thus disturbing her political situation, and, as a consequence, doubtless jeopardizing the results which we have seen achieved since 1917. If, in the years of 1914 and 1915, any Latin-American Government had committed, of its own accord, the mistake of letting itself be drawn into the European War, or if it had abandoned its neutrality because of overt acts, it would certainly have prejudiced the interests of those it had intended to serve.

Let us now take up the question from another point of view.

It is nothing new to say that the United States exercises, and always has exercised, a profound moral influence over the policy of the Latin-American countries; above all, over the more cultivated and prosperous, as they are the ones which receive that influence without destroying their personality, but strengthening it, rather. From the time of Washington, the austere principles of the North American democracy have been an example for our public organisms. If we have been children of Europe intellectually, we have followed the evolution of North America constitutionally. There have existed misunderstandings, ill-will, suspicions and even crises between the United States and Latin America; but all this does not destroy the inevitable fact that a huge, highly organized and rich nation necessarily exercises authority over a group of small nations among which there are not many that have achieved a complete moral sovereignty.

Nor is it new to say that recent years have brought prosperity to what some call "The Pan-American policy," that is, an effort at material and moral interpenetration in the New World, based upon solidarity. This "new policy," whose platform has already been constructed, will, with the passing of the years, sustain a magnificent edifice. Why demonstrate that the United States is the axis of this policy, and that upon her rectitude and morality, as the fosterer of it, depends the adhesion or the aloofness of the Latin-American countries?

Well, therefore, for this reason the neutrality of Chile, during what I call its first period (1914-1917), may not be judged without examining the neutrality of the United States, a nation which, because of her greatness, was within the orbit of the conflict.

Chile beheld, without the least doubt, the neutrality of the government at Washington as the most sincere expression of the law of nations. In the same manner, Chile recognized that the reasons that caused the United States to take part in the war were based upon justice and the exhaustion of all other means. Reciprocally, the United States ought to recognize that the reasons which she had for remaining neutral until April, 1917, were the same as or better than Chile had for maintaining neutrality until the end of the conflict.

In those days of anguish, when the shock of the great nations seemed to have overthrown the rights of the weak nations, the word of the President of the United States attained greater prestige than ever in Latin America, because in coöperating for the defense of the continent, the greater contribution would have to be made by the United States.

On August 18, 1914, President Wilson said, in a proclamation to the people of the United States:

Every man who really loves America will act and speak in the true spirit of neutrality, which is the spirit of impartiality and fairness and friendliness to all concerned. . . . I venture, therefore, my fellow-countrymen, to speak a solemn word of warning to you against that deepest, most subtle, most essential breach of neutrality which may spring out of partisanship, out of passionately taking sides. The United States must be neutral in fact as well as in name during these days that are to try men's souls. We must be impartial in thought as well as in action, must put a curb upon our sentiments as well as upon every transaction that might be construed as a preference of one party to the struggle before another.

On April 20, 1915, at a meeting of the Associated Press in New York, President Wilson expressed himself in this manner:

The basis of neutrality is not indifference, it is not self-interest. The basis of neutrality is sympathy for mankind. It is fairness, it is good will, at bottom. It is impartiality of spirit and of judgment.

He added:

We are the mediating nation of the world. . . . We are, therefore, able to understand all nations. . . . But I am interested in neutrality

because there is something so much greater to do than fight; there is a distinction waiting for this nation that no nation has ever yet got. That is the distinction of absolute self-control and self-mastery.

On December 7, 1915, in a message to Congress regarding German plots and the German-American intrigues, he said:

We have stood apart, studiously neutral. It was our manifest duty to do so. Not only did we have no part or interest in the policies which seem to have brought the conflict on; it was necessary, if a universal catastrophe was to be avoided, that a limit should be set to the sweep of destructive war and that some part of the great family of nations should keep the processes of peace alive, if only to prevent collective economic ruin and the breakdown throughout the world of the industries by which its populations are fed and sustained. It was manifestly *the duty of the self-governed nations of this hemisphere to redress, if possible, the balance of economic loss and confusion in the other, if they could do nothing more.*

This last was uttered by President Wilson when certain individuals were introducing panic in the essential industries of the United States by means of fires, attempts at dynamiting, the destruction of vessels, and organizations of espionage; when the expulsion of the Austrian Ambassador Dumba and that of Herr Dernburg, the imprisonment of Lieutenant Fay and of his twenty-five companions, the suit against the Hamburg-Amerika, the San Francisco plot, the affair of the Welland Canal and that of Lieutenant Wolf von Igel, et cetera, had already taken place. At that time also the steamers *William P. Frye*, *Falaba*, *Aguila*, *Cushing*, *Gulflight*, *Lusitania*, *Armenian*, *Orduna*, *Leelanaw*, *Arabic* and *Hesperian* had been torpedoed, involving loss to the United States. Already the American petroleum vessels *Portland*, *Lama* and *Vico* had been captured.

Many other direct crimes against the rights and interests of the United States and against international law followed in succession up to April, 1917, before the patience of the people of this country had become exhausted. Even on March 5th of that year, President Wilson, when he appeared before Congress to become invested for the second time with the presidency, said, referring to the thirty-one months that had passed since the breaking out of the war: "And yet all the while we have been conscious that we were not part of it."

The United States had taken one step forward, in spite of herself: she had entered upon armed neutrality, which President Wilson de-

fined in that same discourse with phrases filled with humanitarian sentiments:

We have been obliged to arm ourselves to make good our claim to a certain minimum of right and of freedom of action. We stand firm in *armed neutrality* since it seems that in no other way can we demonstrate what it is we insist upon and cannot forego. We may even be drawn on, *by circumstances, not by our own purpose or desire*, to a more active assertion of our rights as we see them and a more immediate association with the great struggle itself.

In recommending the declaration of war on April 2d, President Wilson said, in his celebrated message to Congress:

We have no quarrel with the German people. We have no feeling toward them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval.

So profound was the understanding which the American Government had of its duties, and so serious was its decision to break a neutrality which it would have desired always to maintain, that, on June 14, 1917, two months after war was declared, President Wilson, in an address on Flag Day, still considered it proper to explain and to justify what were the grave and repeated causes that led to the declaration of April 6th:

It is plain enough how we were forced into the war. The extraordinary insults and aggressions of the Imperial German Government left us no self-respecting choice but to take up arms in defense of our rights as a free people and of our honor as a sovereign government. The military masters of Germany denied us the right to be neutral. They filled our unsuspecting communities with vicious spies and conspirators and sought to corrupt the opinion of our people in their own behalf.

If the United States, with all its formidable power, entered the war only after numerous direct and indirect provocations, and upholding to the end the principle of neutrality as a sacred duty, is it logical to think that a weak country like Chile, incapable of adding any appreciable weight to the Allied cause and without having suffered any serious or immediate assaults upon her sovereignty or interests by an act of Germany, was in a position to enter the war?

Would it have been worthy of the antecedents of Chile, which at

other times was able generously to defend the liberty of Peru against the aggressions of Spain, to take a fictitiously warlike attitude upon a simple piece of paper, without making any sacrifice of men or money, that is, to declare war and not to make war? What would have been the juridical basis, the reasonable pretext, for such a fiction? It may be said—and the cheap pragmatists have said it—that she might have contributed by means of legislative measures to the suppression of German commerce within her borders; by not permitting any manifestations of German opinion; and by confiscating the property of Germans.

This may be answered by saying, first of all, that German commerce fell into inanition because of the blockade of Germany and the black-lists. The merchants who were able to sustain themselves did so by carrying on business with goods from North America. To the second, I will say that opinion in favor of Germany was not great in Chile, and that, on the other hand, it was not and could not have been silenced in the Latin-American countries that had declared themselves to be in a state of war with Germany. Confiscation would not have been effected with advantage to the country or to the cause, except in respect of the interned or refuged German vessels; and they were, in general, laid up, because of injuries done to their engines. Germany, on her part, would have compensated herself by confiscating the deposits of Chilean fiscal gold in the German banks and by disavowing certain considerable credits that Chilean establishments held against German firms. It is worthy of note, besides, that none of the Latin-American countries that adopted the fiction of war had recourse to confiscation, which is advantageous only when there is actual war and is therefore burdensome.

On the other hand, Chile, by turning over her entire production of nitrates to the United States and England, as we shall see later, supplied the manufactories of explosives with raw material without violating her neutrality.

I shall investigate, first, in the light of public documents, what was the duty of Chile during the conflict, in order to show, afterward, that the neutrality of my country was found worthy of the commendation of the great victorious Powers, without wounding the sentiments of the German people.

On August 3, 1914, the Government of Chile was informed by the Imperial German Legation in Santiago that the German Empire had

been at war with Russia from the first day of August. The same third day, the Minister of Foreign Relations notified the German Minister that Chile would preserve neutrality during the conflict. An identical reply was given to the other communications by the other legations, as the conflict continued to extend in Europe, and new "states of war" were produced.

On August 7th, Chile declared that, although she had not ratified them, she would adopt the conventions of the Second International Conference of The Hague relating to the rights and duties of neutrals in time of war, as the only authoritative rules to which the conduct of the authorities and inhabitants of the republic, in the observance of neutrality, ought to be adjusted.¹

On August 14th, a decree of the Ministry of Foreign Relations, communicated to the Ministry of Marine, adopted a similar resolution in respect of the Declaration of the London Naval Conference of 1909, which had not been ratified by the Government of Chile.

Upon these two juridical bases and upon the general principles of the laws of nations, Chile began her career as a neutral country. Since from the beginning the Government desired to exercise all its care in maintaining this character, it ordered that, as soon as possible, certain vessels of the national navy should be stationed in the principal ports of the republic to render compliance with the rules of neutrality effective, as far as might be possible with the means at hand, as provided by the Hague Convention.

Immediate instructions were given to the authorities to exert every possible effort to render the purposes of neutrality of the Government of Chile always manifest. During the first months of the war, the Government of Chile issued several decrees to the same intent, and it is a satisfaction to say that the acts of the authorities and citizens were in hearty conformity with them.² The Government recommended the federal authorities to abstain from expressing in public opinions unfavorable to any of the belligerents, a respect in which

¹ *Memoria del Ministro de Relaciones de Chile*, December, 1914—December, 1915, Santiago, Chile, 1918, pages 83-84.

² A decree that attracted attention was the one that established as a jurisdictional sea of Chile, and therefore neutral, the interior waters of the Straits of Magellan and of the southern channels, even in the parts in which the shores are more than six miles distant from each other. This gave occasion to an exchange of notes with the Government of the Argentine Republic, which expressed itself as satisfied with the explanation of Chile.

Chile did not go so far as the United States when President Wilson asked for neutrality of action and thought, not only of the public functionaries, but also of all the citizens.

Chile, like the other maritime nations of South America, comprehended that the observance of neutrality would impose upon her severe sacrifices, greater, perhaps, than upon other countries, because her coasts were more extended, because of the difficulty of keeping watch upon the archipelagoes of the south, and because she had under her jurisdiction the Straits of Magellan, an essential passage for vessels between the Atlantic and the Pacific.

To prevent, as far as possible, complications growing out of the presence of belligerent units in South American waters, Chile used her efforts with the other governments to induce them to adopt uniformly the convention of The Hague relative to the rights and duties of neutrals in the event of maritime war.

Among the measures of the greatest importance adopted by the Government of Chile at the beginning of the war,³ I ought to mention the one that absolutely prohibited any merchant vessel—in compliance with the Declaration of London—while it remained in Chilean waters from using wireless telegraphy,⁴ she being obliged to disconnect some essential part of her apparatus in order that the prohibitions might not be in vain, and to remove the antennæ of such apparatus when a merchant ship, national or foreign, should have to remain in a port of the republic for more than four days.⁵ The safeguarding

³ The Government of Chile took steps at once to abate abuses in the expressions of the press and in public demonstrations, and to regulate telegraphic communications with the outside world and postal correspondence with the Central Powers, the relations between the foreign diplomatic agents and the Chilean functionaries, the issuance of passports, et cetera.

⁴ The official communications of the Minister of Foreign Relations to the Minister of Marine of August 14, 1914, contained in the memorial cited, pages 84-86.

⁵ This last provision was made in compliance with a demand presented by the Minister of France, October 8, 1914, supported by the Minister of Great Britain. The Minister of France said: "Referring to a conversation which I had the honor to hold with your excellency the first of this month, I consider it my duty to bring to your excellency's knowledge some new information which I have received with regard to the employment of wireless telegraphy in Chile in the interests of the German naval forces, and which constitutes an infraction of the rules and regulations of neutrality laid down by your excellency's government. According to this information, which may well be a subject for serious investi-

of the extensive coast of Chile demanded of the Government the constant use of her naval resources. Inasmuch as a permanent patrol service could not be established along the entire coast, the idea was adopted that foreign merchant ships, exposed to capture or to destruction on their courses from one port to another of the republic, should make use of certain trips of the Chilean naval squadron to sail in convoy under its protection.

It was also provided that the islands of Juan Fernandez should receive a periodic visit from a Chilean warship, for want of an established naval station there which would have called for resources that were not available. In particular cases, a special escort was provided for merchant ships, regarding the fate of which in the jurisdictional waters fear was entertained.

Every intimation of a representative of one of the nations at war that implied a violation of the neutrality of Chile gave rise, without loss of time, to a summary order and to a proper investigation with a view to applying the penalty. Provision was also made with all diligence to prevent baseless denunciations, and to this end the diplomatic representatives were requested, in formulating their claims, to indicate with the greatest possible exactitude, the source and ground of their complaints. In the case of persons with dual nationality, it was determined that the applicant for a passport must establish his character as such in the document itself, and that the bearer of such a passport might not have a right to the diplomatic protection of Chile, if any belligerent country should claim him as a citizen. The issuance of passports to Chileans who became naturalized after the declaration of war was refused. The granting of Chilean passports to foreign citizens was also discontinued.

The supply of fuel to the cruisers of belligerent countries was regulated by a decree of December 15, 1914, after a plan of agreement for making certain regulations upon this subject general throughout the American continent had been submitted to the consideration of the United States and some other countries of America.

The fact that Chile was a producer of coal led her to recognize at gation, stations of wireless telegraphy appear to be operating in Valparaiso, not only between the German ships anchored in the bay, but also with a station installed at Valparaiso, and which might perhaps be found in the German hospital, located in the upper part of the city, or in the very house of the manager of the German line of steamers, the *Kosmos*, at the end of Plaza Ancha."

once that her situation would become embarrassing in the presence of maritime activities on the part of the belligerents, and that Convention XIII of The Hague, in its articles relating to the supply of fuel, was not only inapplicable but infeasible in respect of the neutrality and interests of Chile. Indeed, Article 19 of the convention cited provides that belligerent naval vessels may only ship sufficient coal in neutral ports to enable them to reach the nearest port of their own country; and Article 20 adds that such vessels may not replenish their supply in a port of the same Power within the succeeding three months.

The practical infeasibility of these provisions, which would tend to grave abuses, being evident, the Government of Chile, availing itself of the reservation of rights which Convention XIII of The Hague, in the fifth clause of its preamble, grants to the signatory countries to modify their prescriptions during the course of war, when experience has shown the necessity of such a change, and bearing in mind other circumstances, modified its adhesion to the convention cited. By a decree of December 15, 1914, it was provided that belligerent war vessels might ship only sufficient coal to enable them to reach the first coaling port of the nearest nation. The supply of merchant vessels was limited to the capacity of their ordinary bunkers or to what would be necessary for a direct voyage to a European port, provided they gave a guaranty to use the coal not otherwise than on that voyage. The Secretary of State of the United States considered this decree a definite act that might serve as a basis for resolutions upon the part of other governments.⁶ Moreover, it was prescribed that before effecting the delivery of coal to a belligerent warship, authorization should be sought of the Directorate General of the Navy.

This decree elicited certain observations from the British Admiralty, in that section which has to do with the coaling of merchant vessels. On its part, the German Government declared that it could not recognize the right of the Government of Chile to decree that belligerent war vessels might provide themselves in Chilean ports with only coal sufficient to enable them to reach the nearest neutral coaling port. Germany considered this measure to be an innovation of the established rules of international law, and that it was favorable to the interests of the United States, England and France and to the prejudice of those of Germany.

⁶ Memorial cited, page 116.

The British Admiralty was tacitly satisfied with the explanations given it by the Government of Chile and with the demonstrations of good will expressed by the latter to avoid any abuse that might prejudice England. The Minister of Foreign Relations, Señor Alejandro Lira, said:

The Government of Chile, in the measures which it is adopting for the maintenance of neutrality, has no other design than to proceed with justice, without causing any person or any country an unmerited injury, and whenever new cases are offered for its consideration, of sufficient weight to alter its decisions, it will study them with a dispassionate mind.

As for the concrete cases of merchant vessels that had abused their coaling privilege, it was made clear that either the abuse had been committed before the decree became effective, or that it had been done in spite of the good faith and due diligence of the Government of Chile. It was also proven that certain charges were groundless.

Victualing was regulated according to a system based upon an estimate of the duration of the supply computed according to the per diem of consumption and the number of the crew, so that, when a belligerent war vessel was victualled in a port of Chile it might not revictual in a port of this country, save when its supply were exhausted by the ordinary consumption of the vessel.

In respect of merchant vessels armed for their own defense, the Government of Chile formulated its opinion in replying to the inquiry of the British Government:

That just as Chile had never objected to admitting to its ports, in the character of merchantmen, vessels that had been auxiliaries of belligerent naval forces, which again become merchant vessels, so neither would she object to receiving merchant vessels armed for their own defense, provided the respective governments should comply with the following conditions: (a) that they should make known previously to the Government of Chile the name of the vessel; (b) that, from the ship's roll, passengers, merchandise, layout and armament of the vessel, it should appear in reality that she was a merchant vessel. If a vessel arrived without compliance with the provision for previous advice, it would be treated as under suspicion.⁷

The German Minister asked that the English cruiser *Orama* be interned at Valparaíso for having taken part in the attack upon the

⁷ Decree of the Ministry of Foreign Relations of July 7, 1915.

German cruiser *Dresden*, within the three-mile limit of Chilean waters, and the Minister of Foreign Relations replied: "The fact of the violation of neutrality has not been made clear, and, besides, the *Orama* had reached Valparaiso in fulfillment of the humanitarian mission of bringing in the wounded Germans from the *Dresden*."

A similar request was presented by the German Minister in respect of the English cruiser *Kent*, which, after the sinking of the *Dresden*, entered Valparaiso and sought the use of the dock of Talcahuano to make visibly necessary repairs. The Minister of Foreign Relations declared that the case of the *Kent* was covered by Article 17 of Convention XIII of the Second Hague Conference, "a provision," said the Minister, "based upon the permanent grounds of a lofty altruism that must have preëminence over the transitory purposes of the sanction that inspired the second paragraph of Article 9, invoked by the representative of Germany."

Nevertheless, in order to provide for future cases, it was decreed that thereafter no belligerent vessel guilty of having violated the rules of neutrality would be admitted to ports of the republic, except in the case of damages provided for in Article 17 of the above mentioned Convention XIII.

I shall now present a fact that may not be passed over without special mention and which shows the correctness with which our chancellery proceeded. When the Imperial German Government notified neutrals on January 31, 1917, that there would be established within a short time a maritime blockade zone around England, France, Italy and the western part of the Mediterranean wherein "any ship found, even if it be neutral," would be sunk without any consideration whatsoever, the Government of Chile, although it did not fear for its own vessels, as it would not send them to that zone, openly condemned that inhuman determination.

That measure, in the opinion of the Chilean Government, amounts to the restriction of neutral rights, to which this country cannot submit, because it is contrary to principles long recognized in respect of countries not at war. The recognition by Chile of the step taken by Germany would be equivalent to a departure from the strict neutrality which she has observed during the present European conflict. Chile therefore reserves her liberty of action to insist upon her rights, in case of an attack upon her ships.

THE SECOND PERIOD OF THE NEUTRALITY OF CHILE SUBSEQUENT TO
APRIL 6, 1917

What may be called the second period of the neutrality of Chile, that is, from the entrance of the United States into the war, was easier to meet, because, as the German warlike activities had disappeared from the Pacific long before, and as there were no reasonable grounds to fear that they might return, Chile found her task of vigilance much simplified. The control of suspicious persons in our territory was now perfectly organized, both by the Chilean authorities and by the system established for the issuing and viséing of passports by the foreign consuls upon whose responsibility depended the character of the individual. Besides, with the progress of the war, police methods and the personal identification and movement of passengers were sufficiently perfected to permit an almost complete vigilance.

From the point of view of international policy some have interpreted the neutrality of Chile, after 1917, as a demonstration of the fact that the United States did not have sufficient ability to draw with her into the war the other American countries of relative strength. Some have attributed the Chilean and Argentine neutrality to a fantastic German influence, the secret of which no one has discovered. The truth is, however, that Chile remained neutral for the same reason that she had been so hitherto, that is, because she was not affected by any of the grave causes that determined the decision of the United States, when the German policy had "prevented her from being neutral," according to the expression of President Wilson.

For Chile, neutrality continued to be a duty. "It is our manifest duty to do so," President Wilson had said in December, 1915. "It was manifestly the duty of the self-governed nations of this hemisphere to redress, if possible, the balance of economic loss and confusion in the other, if they could do nothing more."⁸ According to the sound doctrine of President Wilson, a conflict of such magnitude could not be entered "by our own purpose or desire, but by circumstances."⁹

So be it; what "circumstances" could effect a change in policy on the part of Chile? For us, as for the United States, "the purpose

⁸ Message to the Congress of the United States, December 6, 1915.

⁹ Address of March, 1917.

or simple desire" was not a sufficient cause for war, to make war, nor much less the desire to simulate a war of the spirit, in order to obtain advantage without any positive sacrifices. Nor did the fear of the conqueror ever enter our minds, either, because our neutrality was honest; and the idea of reprisals against a country that, in the extreme silence of the world, keeps within the strictest law, was not even remotely presumable.

Italy and China entered the conflict, because it affected them vitally and because they had other reasons for doing so; Roumania and Greece, because they were insistently besought and because they found themselves in the whirlpool, lent valuable coöperation. Portugal sent her troops to the battle front. Brazil aided, also, to a certain extent, in guarding the waters of the equatorial Atlantic.

Chile was neither solicited nor compelled, because she was not involved in the political causes of the war nor in its sphere of action, and because no one considered that a nation so far removed from the theater of hostilities might be useful as a military or financial entity, while she was so as a factor of production, for which peace was essential.

The United States, once in the war, never intimated to Chile the propriety of abandoning her neutrality. She did not believe that Latin America was involved in a *casus fœderis* derived from Pan-Americanism. She did not exercise any pressure upon Chile or the Argentine Republic, to the end that these two major nations of the south should accept as theirs the offenses that Germany had been guilty of toward the interests of the United States. Her campaign among the nations was limited to showing the governments and peoples that the United States was carrying on the war with justice and without any desire for conquest or indemnities, and impelled solely by the necessity for defending the cause of democracy.

Nor did the United States understand that the Pan-American policy, whose program was shaped in the First Pan-American Financial Congress, held in Washington in 1915, would be weakened by the fact that in America there were neutral and unneutral countries. We have already seen that hitherto the Pan-American policy did not mean an alliance, but the basis of a moral, social and commercial interpenetration derived from a mutual understanding.

It is pleasant to relate that the neutrality of Chile was highly appreciated by the United States, and that this country continues to

regard Chile as an efficient collaborator in the constructive work of Pan-Americanism.

VIOLATIONS OF THE NEUTRALITY OF CHILE ON THE PART OF THE
BELLIGERENTS

The British steamship *Orita* was detained upon the high seas by the British cruiser *Glasgow* and compelled to deliver a hundred and three pouches of mail intended for national residents and foreigners in Chile. The claim being established by appeal to Convention XI of The Hague, England maintained that the law set up in that convention referred to such correspondence as might be found on board a neutral or enemy vessel only, and not upon a belligerent ship under the nation's own flag, as the *Orita* was. Nevertheless, the British Government declared that in this particular case it did not desire to insist upon what it believed to be its right, and it issued orders to return the pouches.

The numerous merchant vessels under the German flag that were scattered along the coasts of Chile when war was declared gave rise to several complications, because many of these ships were converted into auxiliaries of the German navy, and it was necessary to treat them as vessels of war. On more than one occasion, the cases were open to doubt, as the German Government never gave official notice of the status of such vessels, and it fell to the Government of Chile to determine it, on the basis of its own investigations or from antecedents obtained from neighboring governments. As a rule, in attributing to these vessels the character of auxiliary cruisers for violation of Chilean neutrality, they were notified of the requirement to leave the port in which they lay at anchor within twenty-four hours. Those that did not comply with this order were interned, *de facto* and by voluntary act, until the end of the war. In settling the question in the manner in which it did, the memorial of the Ministry of Foreign Relations said:

The Government of Chile stated the question in the following terms: Either the German Government admits, as its silence indicates, that these vessels form a part of the Imperial German Navy, or it denies them their character as such, thus leaving them in the position of vessels of private ownership that engage in acts of war or that cooperate with them upon their own responsibility, which is characteristic of vessels denominated piratical, and which makes them susceptible to confiscation by the state in whose territory they are found.

The steamers of the Kosmos Company were those that violated our neutrality with the greatest frequency and therefore they were declared auxiliaries of the Imperial Navy, and hence interned, because they did not leave the Chilean ports within the required twenty-four hours. They were ordered to discharge their supplies of coal, until there should be left them only what was necessary for harbor service. When the German naval power disappeared from the waters of the Pacific, the Government of Chile heeded the observations of the German minister and moderated the severity of the measures taken against these vessels. They were granted freedom to sail at their own risk, subject only to the general rules of neutrality which the Government of Chile had decreed, without prejudice to contingent circumstances which might compel a renewal of the rigor of the former decrees. The violations participated in by the steamers *Santa Isabel*, *Rakotis*, *Luzor*, *Memphis*, *Amasis*, *Karnac* and *Goettingen* were perfectly defined.¹⁰ They all consisted of clandestine aid given to the German fleet.

The press of Chile published, November 20, 1914, a declaration attributed to the agent of the Kosmos Company, according to which:

Every German steamship, although it belong to private companies, is placed under orders that are to be given by the German Admiralty. The captains of vessels must, above everything, obey the instructions they receive from war vessels, and, in the event, proceed with entire independence and even without giving any information whatsoever to the agent of the company.

These words explain clearly why the German merchant steamers so often violated the neutrality of Chile.

Infractions committed by belligerent war vessels are chargeable against Germany and Great Britain, as I shall hereafter proceed to state.

A German naval division, composed of twelve units, remained off the Island of Pascua, at the close of 1914, for five days, and it there took on a supply of provisions greater than what was normal in time of peace, thus violating Articles 12, 15 and 19 of Convention XIII of The Hague. The Island of Pascua is a very remote Chilean possession that belongs geographically to the system of archipelagoes of Oceania, and therefore it was almost impossible for Chile constantly to safeguard her neutrality there.

¹⁰ Memorial of 1914-1915, page 156.

Another German naval division, composed of seven units, remained for seven days in the bay of the Juan Fernandez Islands, conducting three prizes (the French vessel *Valentine*, the Norwegian, *Helicon*, and the American, *Sacramento*), from which were passed fuel and victuals.

On December 6, 1914, the war transport *Prinz Eitel Friedrich* entered the port of Papudo without obeying the rules of the port regulations; and she disembarked fifty-eight of the crew of the English steamship *Charcas*, which the same German transport had sunk off the coast of Chile.

On March 9, 1915, the German cruiser *Dresden* anchored off the Bay of Cumberland (Juan Fernandez Islands) and sought permission to remain for eight days in the port in order to make repairs upon her engines. The maritime governor refused permission on the ground that the request was suspicious, inasmuch as the engines of the cruiser seemed to be in good condition when she entered the port. The authorities understood that it was a lack of coal that had in reality compelled the cruiser to await there the arrival of some auxiliary ship; and, in view of this, they gave her peremptory orders to leave the bay within the required period. She did not comply with the order, and they notified her that she was interned.

The Island of Pascua was the object of a new violation on the part of the auxiliary cruiser *Prinz Eitel Friedrich*, which cast anchor for eight days in the Bay of Angarroa. There she shipped coal from the French sailing vessel *Jean*, brought in as a prize. She also disembarked a body of marines upon a deserted spot, and they established a point of observation upon a hill.

The energetic protests of the Government of Chile, presented to the Imperial German Government on account of these five violations, were answered in a manner that did not wholly satisfy the Chilean Government, and as a consequence, the Government further insisted upon them, with a more abundant accumulation of data. The chancellor, Zimmermann, promised certain excuses for these incidents at such moment as conclusive proofs might be obtained that the neutrality of Chile had been positively violated.

The German cruiser *Dresden* was attacked, July 4, 1915, at her anchorage in the Bay of Cumberland, within five hundred meters of the shore, where she was interned, as has been seen above. The attack was made by a British naval division composed of the cruisers *Glasgow* and *Kent* and the auxiliary *Orama*. The flag of parley raised

by the *Dresden* being ignored by the attackers, and her explanation that she was in neutral waters being rejected, she received an order to surrender, which was not obeyed. Then the English vessels opened fire upon the *Dresden*, and her crew blew up the vessel. The Government of Chile, which had already protested against the presence of the *Dresden* in the territorial waters, protested, in turn, to the British Government, on March 26th, on account of the act of violation committed in attacking the German cruiser under such circumstances. Sir Edward Grey replied four days later, stating that he deeply lamented any misunderstanding with the Government of Chile, and that, abiding by the facts "as stated in the communication made to them, they are prepared to offer a full and ample apology to the Chilean Government." Sir Edward Grey ended his note by saying:

But in view of the length of time that may be required to clear up all the circumstances and of the communication that the Chilean Government may have made of the view it may take of the information it has of the circumstances, his Majesty's Government does not wish to qualify the apology that it now presents to the Chilean Government.

In order to terminate this paragraph, I desire to mention that the crew of the German cruiser *Dresden*, sunk at Juan Fernandez, was interned by the Government of Chile upon the Island of Santa Maria, it basing this action upon Articles 57-60 of the Convention of The Hague of 1899 concerning the laws and uses of land war, and upon the provisions of Conventions V (second paragraph), X (Articles 14 and 15) and XIII (Articles 3, 21 and 24) of the Second Conference, the import of which is: Every belligerent armed force that shall enter a neutral territory must be interned, whether in the case of those who are wounded or shipwrecked, or of persons who have the neutrality of the state. The German Government declared that this internment was inadmissible because the crew of the *Dresden* had been forced to land upon Chilean territory only as a result of the violation of international law committed by England. Germany maintained that "no international practice or convention was applicable to the case as it was a question of an occurrence not foreseen by international law."¹¹ The British Government was consulted regard-

¹¹ Note of von Eckert, Minister of Germany in Chile, replying to a proposal to set at liberty within the territory the crew of the *Dresden*, provided they would give their word not to participate again in hostilities.

ing the case, in order that an agreement might be reached that would not violate the principles upheld by Chile, and that government held that "in view of the events which had occurred in the United States (fires, explosions, et cetera), it was dangerous to set at liberty this crew who might set about injuring British commerce." The crew of the *Dresden* was kept interned until the end of the war, not without new incidents, one of which was caused by the wrecking of a transport of the national navy, the *Casma*, sent in pursuit of certain interned fugitives. The *Casma* was a transport of eight thousand tons and of great value to the country at that time. Moreover, the maintenance of this numerous crew has caused the Government of Chile enormous sums, which are still to be recovered.

A French Claim.—The Government of France demanded of the Government of Chile, in severe terms, compensation for the capture and destruction of the French ship *Valentine*, torpedoed by the cruiser *Leipzig* of the Imperial German Navy in the jurisdictional waters of Chile. The Government of Chile energetically rejected the imputation of culpable negligence in the observance of neutrality, made by the French Government, and it ordered an especial investigation, which threw no light upon the precise spot in which the sinking of the vessel had taken place, in spite of the fact that the investigation was carried on with the aid of the captain of the *Valentine* himself. When the defense of the Government of Chile was presented against the charge that the French Government addressed to it, the latter did not insist upon its demand.

EXPRESSIONS OF APPRECIATION REGARDING THE NEUTRALITY OF CHILE

I transcribe here some of the expressions of appreciation which the scrupulous attitude of Chile during the war has called forth from the Government of Great Britain, whose friendship and whose intimate knowledge of the country and of our history are traditional, from the days in which an English sailor, Lord Cochrane, was the originator and admiral of the first Chilean squadron, now a century ago. The British Government, aware, besides, that our extensive coasts—more than four thousand kilometers—could only be guarded in so far "as the means at its disposal allowed," as runs Article 25 of Convention III of the Second Conference of The Hague, was able to give to our efforts all the value they possessed, since, in reality, they exceeded "the means at our disposal," to the point of sacrifice.

So well did the British Government recognize this that during the war it presented Chile a small squadron of submarines and an aerial fleet of fifty combat planes, with all their accessories and installations, as an extraordinary compensation to Chile for having conceded to Great Britain two powerful dreadnoughts, several destroyers and other minor vessels, which were being constructed at English shipyards.

Señor Alejandro Lira, Minister of Foreign Relations of Chile, in the memorial of his department,¹² said, addressing the Minister of France:

The effort displayed by the Government of Chile was particularly advantageous to the British maritime commerce, to the extent that the amount of the latter has been a hundred times greater than that of any other belligerent or neutral flag, including the French. Of immense value, consequently, is the judgment that has been elicited from the government most affected in the interests of its nationals in respect of the attitude of the Government of Chile during the present European conflict.

In the month of November, 1914, the Minister of Foreign Relations of Great Britain, Sir Edward Grey, delivered to the press of London, the following official communication:

Statements have recently appeared in the British press to the intent that Chile has failed in the observance of the laws of neutrality. *These declarations are not in accord with the facts, and they do not in any way reflect the opinion of the Government of his Britannic Majesty.*

Sir Francis Stronge, the Minister of Great Britain in Chile, confirmed this opinion of his chancellery in several official communications to the Ministry of Foreign Relations of Chile, as I am going to demonstrate with certain quotations gathered from documents:

Permit me to thank your excellency for the promptness which has been displayed by the Government of Chile in taking up this subject [the measures for the observance of neutrality], regarding which I have already informed the Government of His Majesty.¹³

I fully recognize that the Chilean Government and authorities have shown great zeal and activity in their efforts to protect the neutrality of Chile.¹⁴

I desire to express to your excellency my appreciation of the atti-

¹² Memorial of 1914-1915, page 197.

¹³ Note of August 15, 1914.

¹⁴ Note of October 6, 1914.

tude of the Chilean gunboat in thus protecting a British vessel against an attack in Chilean waters.¹⁵

The Admiralty trusts that the old traditions of comradeship that unite the British and Chilean navies will move the Government of Chile to do all that it can, within the limits of neutrality, to seek and to rescue the officers and sailors wrecked upon the coast and islands of Chile. I hardly need to say that when these instructions were despatched, Sir Edward Grey had not yet received a telegram of mine in which I informed him of the rapid and generous action of the Government of Chile in sending a transport to the place of the recent combats and in conveying adequate instructions to the authorities of the littoral.¹⁶

I have the honor to communicate to your excellency my sincere thanks for the rapid measures that the Government of Chile has taken, in despatching a war vessel for the purpose of preventing the British ship *Oronza* from being attacked in the territorial waters.¹⁷

I know too well that the application of Chilean neutrality has imposed a task too heavy upon the Chilean naval forces, and I feel myself restrained from formulating a petition that will increase their labors.¹⁸

I have the honor to communicate to your excellency that I have received a telegram from Sir Edward Grey in which he instructs me to express to the Chilean Government the satisfaction which his Majesty experiences over the measures that Chile has taken to maintain her neutrality by holding temporarily the vessels of the Kosmos Company and by preventing them from shipping coal.¹⁹

I think worthy of mention, because of their importance, the words of Sir Maurice de Bunson, who visited the Republic of Chile as a special ambassador in 1916, and of Lord Curzon, the Minister of Foreign Relations of Great Britain. Sir Maurice expressed without reserve his admiration of the conduct of Chile during the war and of the organization of our country, affirming that it was there he found an environment of deepest sympathy with England. Lord Curzon, at a banquet given in London a few months ago, in honor of the special embassy of Chile, presided over by Señor Ismael Tornel, pronounced a discourse filled with the most pleasing demonstrations of friendship for Chile, and he said that, in all the course of the relations of Chile with Great Britain, there had never occurred

¹⁵ Note of November 1, 1914.

¹⁷ Note of November 6, 1914.

¹⁶ Note of November 7, 1914.

¹⁸ Note of November 23, 1914.

¹⁹ Note of December 3, 1914.

a disagreement. Referring to our neutrality during the war, he qualified it as wise and correct and not lacking in benevolence toward the cause of the Allies.

CHILE AS A SOURCE OF RAW MATERIAL FOR MUNITIONS

The National City Bank of New York, in a report upon the economic and financial condition of Chile during 1919, said, in discussing saltpeter: "The nitrate industry has served to an extent not exceeded by any other in the war which has ended with the vindication of the cause of liberty." This phrase would need no comment, if I did not have to add a special observation that nitrates are a Chilean monopoly, since she is the only country that produces this salt. In time of peace, it fertilizes the fields and it has saved many countries from agricultural exhaustion; in time of war, it is the raw material of explosives. It is not an exaggeration to say that Germany owed her defeat in part to the impossibility of obtaining abundant and cheap raw material for her projectiles. When the war broke out, her stock of Chilean nitrates did not reach a million tons, according to what has been said. The German chemist Oswald, mentioned by Waldemar Kaempffert, editor of *The Popular Science Monthly*, wrote some years before the war:

If today a great war should break out between two great Powers of which one were to prevent the export of saltpeter from the ports of Chile, it would thereby make it impossible for the enemy to continue longer than its ammunition supply would last.

Well then: it being known that Chile neither put any obstacle in the way of commerce in saltpeter nor raised the price of it to any considerable extent, could the most exacting enemies of neutrality overlook the fact that, by this mere act alone, Chile rendered more assistance than if she had entered the war without a direct motive, thus exposing the plants for the elaboration of saltpeter to the danger of destruction or interruption?

Mr. Bernard M. Baruch, the head of the raw material division of the War Industries Board of the United States, testifying at the custom-house before a subcommittee of the House committee which is investigating war expenditures, declared that the nitrate situation became critical for the Allies in the spring of 1918. At that time, he said, a break of from thirty to sixty days in the flow of Chilean

nitrate to the munition factories of England, France, Italy and the United States *would have caused all of them to close*. "If Germany had seized her opportunity and bought up the Chilean nitrate fields and closed them down, *it is horrible to contemplate what might have happened*," added Mr. Baruch.²⁰

Chile did not give Germany this opportunity. On the other hand, the Government of Chile bought from the German nitrate operators all their production of nitrates and paid for it with the gold that Chile had deposited in Berlin and Dresden. These nitrates were immediately resold by the Government of Chile to the Allies.

NEUTRALITY DOES NOT MEAN INDIFFERENCE

Neutrality is a juridical state constituted by the special duties and rights which war creates between belligerents and other nations. This juridical state, however, does not signify indifference, as President Wilson said, nor is it "neutrality in the face of crime," as excited extremists have said.

Chile, as a social collectivity, showed a passionate interest in the events of the war; the invasion of Belgium and the tragic fate of that nation excited the deepest sympathy among the society of my country, which at every moment was profoundly moved, as is natural in the time of misfortune, by that people, smitten by the sword of a crushing military power. It is not germane to speak of our material aid given to the sufferings of Europe; it is sufficient to know that Chile is the Latin-American country that contributed most to the Red Cross and other beneficent institutions. Lucien Guitry wrote in *Le Figaro*, of Paris, a beautiful article to pay homage to the generosity and nobility of Chilean society.

I think I am stating an incontrovertible truth when I affirm that the neutrality of Chile, legal and necessary, was in accord with the measures of good government; but also it is true that the majority of the people of Chile, because of their peaceful sentiments, their traditions of culture and their old bases of intellectual formation, heartily sympathized with the fall of that militarism whose first victim was the German people itself.

Chile complied with her duties as a neutral, without being indifferent.

²⁰ The New York *Sun* of December 11, 1919.

THE PAN-AMERICAN FINANCIAL CONFERENCES AND THE INTER-AMERICAN HIGH COMMISSION

BY JOHN BASSETT MOORE

*Vice-Chairman of the Inter-American High Commission and
Vice-President of its Central Executive Council*

On March 12, 1915, while the Great War, daily increasing in intensity, was drawing the world more and more into its vortex, the American Governments were, in the name of the President of the United States, invited to send delegates to a conference with the Secretary of the Treasury, at Washington, with a view to establish "closer and more satisfactory financial relations between the American Republics." To this end it was intimated that the conference would discuss not only problems of banking, but also problems of transportation and of commerce. It thus came about that there assembled in Washington on Monday, May 24, 1915, under the chairmanship of the Honorable William G. McAdoo, Secretary of the Treasury, the first Pan-American Financial Conference.

The subjects submitted to the conference embraced public finance, the monetary situation, the existing banking system, the financing of public improvements and of private enterprises, the extension of inter-American markets, the merchant marine and improved facilities of transportation. It was a program that went beyond the emergencies growing out of the war; and the conference in its deliberations did not confine itself to the adoption of temporary devices. On the contrary, it sought to meet a permanent need by establishing an organization which should devote itself to the carrying out of a task whose importance was not to be measured by temporary conditions, whether of war or of peace.

The formulation of the program of future work was entrusted to the Committee on Uniformity of Laws relating to Trade and Commerce and the Adjustment of International Commercial Disputes.

The report of this committee, while reserving for separate and distinct treatment the difficult and complex problems of transportation, recommended that the following subjects should be specially pressed:

1. The establishment of a gold standard of value.
2. Bills of exchange, commercial paper, and bills of lading.
3. Uniform (a) classification of merchandise, (b) customs regulations, (c) consular certificates and invoices, (d) port charges.
4. Uniform regulations for commercial travelers.
5. Measures for the protection of trade-marks, patents, and copyrights.
6. The establishment of a uniform low rate of postage and of charges for money-orders and parcels-post between the American countries.
7. The extension of the process of arbitration for the adjustment of commercial disputes.

For the purpose of dealing with these subjects, and particularly for bringing about uniformity of laws concerning them, the committee recommended that the independent American countries establish an Inter-American High Commission, to which each country should contribute a section. To this end each Minister of Finance, or, in the United States, the Secretary of the Treasury, was to appoint not more than nine persons, residents of the country, who, with himself as *ex officio* chairman, should constitute the national section, the aggregate of these sections constituting the Commission. The advantages of this plan were obvious. As the national sections, composed of citizens of the respective countries, and headed each by a cabinet minister, were in immediate relations with their governments and could deal with them directly, the work of the international body could by this means be carried on continuously and in all the countries at once, without suspicion of intrusiveness or suggestion of impropriety, and also without the complications, perplexities and delays which circuitous methods and absorbing formalities tend to engender. The recommendations of the committee were unanimously adopted, and the Inter-American High Commission came into being.¹

The conference further resolved that the local members of the

¹ In fact, the title "International High Commission" was then used; but, as "Inter-American High Commission," which is more accurate, has since been substituted for it, I use the latter throughout this paper, so as to avoid the perpetuation of a discarded title.

Inter-American High Commission should be immediately appointed in their respective countries; that they should at once begin preparatory work; that the various governments should be requested through their appropriate departments to coöperate in the work of the Commission; and that the members of the United States Section should, as soon as practicable, proceed to visit the other American countries to meet the members of the Commission there resident. The establishment of the Inter-American High Commission was a measure of the greatest practical significance.

In 1889, there met at Washington the first of the assemblies known as the International American Conferences, of which four have so far taken place, and of which the fifth, but for the outbreak of the war in 1914, would long since have been held. Although the first of these conferences encountered criticism and even derision, it would be difficult, if not impossible, to find any one today who would either censure their spirit and purpose or deny their beneficent effects. The good results accomplished by them could hardly be overestimated. They undoubtedly blazed the way for the numerous other conferences, scientific, educational and economic, in whose proceedings the progress of Pan-Americanism during the past three decades is recorded. But the International American Conferences had one capital defect: they lacked a permanent organization to carry on their work. Hence, after they adjourned, the excellent and far-reaching plans which they had incorporated in treaties, conventions and resolutions, often lapsed and remained unexecuted for want of a continuous and permanent body to follow them up and attend to their ratification, application and development. The want of such a body in our inter-American relations was supplied by the creation of the Inter-American High Commission, the United States Section of which was legislatively sanctioned by the Act of Congress of February 7, 1916.

In conformity with the resolutions of the first Pan-American Financial Conference, the United States Section in due time proceeded to Buenos Aires, where, in April, 1916, the Inter-American High Commission held its first general meeting, under the presidency of the Hon. Francisco J. Oliver, Argentine Minister of Finance. All the national sections of the Commission were represented at this meeting, more than seventy of its members being in attendance. Nothing could more clearly attest the general interest felt in the work or the universal appreciation of its practical importance.

At Buenos Aires the Commission, besides dealing with the subjects designated by the first Pan-American Financial Conference for special treatment, also included in its deliberations the question of international agreements on uniform labor legislation; uniformity of regulations governing the classification and analysis of petroleum and other mineral fuels with reference to national development policies; the necessity of better transportation facilities between the American Republics; banking facilities, the extension of credit, the financing of public and private enterprises, and the stabilization of international exchange; telegraphic facilities and rates, and the use of wireless telegraphy for commercial purposes; and uniformity of laws for the protection of merchant creditors.

At Buenos Aires the Inter-American High Commission also took an important step in the further development of an effective organization. This was done by the creation of a common organ or agency, called the Central Executive Council, consisting of a president, a vice-president, a secretary-general, and an assistant secretary-general; and as Washington was unanimously designated as the headquarters of the Commission till its next general meeting, the chairman, the vice-chairman, and the secretary of the United States Section thus became the Central Executive Council, with the responsibility of supervising, coördinating and carrying on the Commission's work.

The work has been steadily and energetically pressed. Valuable publications, intended to elucidate and support the measures which the Commission has in charge, have been prepared, printed, and circulated, and appreciable progress has been made in securing the adoption of those measures. In these activities the Central Executive Council has had the intelligent, hearty and efficient coöperation of the several national sections, which have, in many instances, made admirable studies of the subjects under consideration.

Substantial ameliorations of methods of customs administration have been secured in various quarters. Regulations permitting sanitary visits outside regular hours, the simultaneous loading and unloading of cargoes, and the advance preparation of cargoes, have been brought about in numerous countries. Progress has been made with the adoption of a uniform statistical classification of merchandise, as recommended by the Inter-American High Commission at Buenos Aires. Six countries have already taken favorable action, and two more are understood to be on the point of so doing. Every effort

has been made to advance uniform legislation in regard to bills of exchange, checks, bills of lading, and warehouse receipts, and appropriate documentary material has been prepared and circulated on those topics.

In dealing with the subject of bills of exchange, the Inter-American High Commission, taking into consideration the legal conceptions generally prevailing in the American countries other than the United States, and the opinions of their leading jurists, decided to recommend to those countries the adoption of The Hague Rules of 1912, with certain modifications. This decision has been justified by the results. Already The Hague Rules have been substantially incorporated in the codes of Brazil, Guatemala, Nicaragua, and in the new commercial code of Venezuela; and measures of like purport have been introduced in at least four other countries. We seem to be rapidly approaching the time when, so far as concerns bills of exchange, there will, in effect, be only two systems in use in the Western Hemisphere, based, respectively, on The Hague Rules of 1912 and the United States Negotiable Instruments Act of 1916.

A bill has been introduced in the Congress of Uruguay to incorporate into the Commercial Code the tentative Hague Rules of 1912 in regard to checks. The new Venezuelan Commercial Code of December 19, 1919, incorporated these rules. In the Congresses of Argentina and Nicaragua, measures have been introduced similar to the United States Bills of Lading Act. The Commission has also been glad to observe a growing interest in the adoption of uniform legislation on the subject of warehouse receipts, as well as on that of conditional sales. The Peruvian Congress has lately enacted a law on the former subject, substantially based on the Uniform Warehouse Receipts Act in the United States, and a similar step has been under discussion in Argentina, Paraguay, and Uruguay. Increased interest in conditional sales legislation has notably been shown in Argentina, Brazil and the United States.

During the war, constant efforts were made by the Inter-American High Commission, largely through the Central Executive Council, acting in coöperation with the various national sections, to relieve the burdens and inconveniences arising out of the conflict, as regards transportation and other matters. Of those efforts, no detail can now be given. It is necessary on the present occasion to limit the rehearsal of the Commission's activities chiefly to measures of a com-

prehensive and systematic nature, the development of which is still going on.

Among those measures one of the most important is that bringing into operation the convention adopted by the International American Conference at Buenos Aires, in 1910, for the protection of trade-marks. By this convention the American Republics were divided into two groups, the northern, embracing the United States, Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, and Salvador; and the southern, embracing Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, and Venezuela. Of the southern group, Rio de Janeiro was designated as the official center, and of the northern, Havana; and at each of these capitals there was to be established an international bureau for the registration of trade-marks, so as to secure their international protection in the Americas. This treaty, so closely related to the interests of the countries concerned and not least to those of the United States, had lain dormant and unratified. The Inter-American High Commission took it up and brought about its ratification by the requisite two-thirds of the northern group, all of whose members, except Mexico and Salvador, have now ratified it. As a result, the International Bureau of Havana is now open and in operation. It is hoped that a similar result may soon be attained in the southern group, where Bolivia, Brazil, Ecuador, Paraguay, and Uruguay have so far deposited their ratifications. Meanwhile, it would seem to be worth while to consider whether, pending the establishment of the Rio bureau, an arrangement might not be made whereby the members of the southern group, which have ratified the convention, may gain the benefits of international registration by accepting the services of the bureau at Havana.

Another measure that has been vigorously pressed is the convention to facilitate the operations of commercial travelers. In a number of the American countries local taxes, practically prohibitive in amount, on the operations of such travelers, have for many years existed. The Inter-American High Commission, at its meeting at Buenos Aires, adopted a resolution containing the basis of uniform regulations for commercial travelers and their samples. Taking this resolution as a starting-point, the Central Executive Council drafted an international convention, which, after examination and revision, was submitted by the Department of State to the American Governments,

looking (1) to the substitution for all local taxes of a single national fee; and (2) to the admission of samples, (a) without value, free of duty, and (b) with value, under bond for payment of duty on any not afterward withdrawn. This convention, which was first signed and ratified by the United States and Uruguay, has since been signed and ratified by Guatemala and Panama, and has been signed by five other countries—Salvador, Venezuela, Paraguay, Ecuador, and Nicaragua—whose ratifications are awaited. It is understood that several others are ready to sign the convention, while yet others are still considering it, some apparently with favor.

Another measure preferentially dealt with, because of its significance for the future as well as for the present, is the treaty for the establishment of an international gold clearance fund. This treaty has a twofold object. It is designed not only to assure the safety of deposited gold and to avoid the necessity of its shipment when difficulties in transportation exist, but also to facilitate and stabilize exchange through the adoption of an international unit of account. The plan was very carefully studied by the Inter-American High Commission at Buenos Aires; and subsequently, through the coöperation of the Central Executive Council with the Department of State, at Washington, it was incorporated in a draft of a treaty. This draft has so far been signed with the United States by Paraguay, Guatemala, Panama, and Haiti, but it has been approved in principle by at least six other Republics, some of which are now actively considering its adoption.

In order that the nature and object of this treaty may be understood, I will give a precise outline of its provisions. It is agreed that all deposits of gold, made in a bank designated for the purpose, in any of the signatory countries, for the payment of debts incurred in another such country in private commercial and financial transactions, shall be treated as an international trust fund, to be used for the sole purpose of effecting exchange, where, for one reason or another, the actual shipment of gold is to be avoided. To attain this end, the treaty provides the following machinery: Each signatory government is to designate a bank within its jurisdiction to hold any part of the fund there existing as joint custodian with such person or persons or such institution or institutions as the signatory governments may concur in appointing for the purpose. These joint custodians would hold the moneys so entrusted to them, as part of the

fund, subject to the order of the creditor or creditors for whom the fund is held. Obviously, as the number of signatory governments increased, so would the number of joint custodians. While the international scope of the fund would thus be enlarged, the interest in its security and administration would be correspondingly widened.

The details of the practical operations of the fund are to be regulated and determined between the designated banks. In order to facilitate such operations the signatory governments agree to take into consideration the ultimate adoption of a uniform exchange standard, permitting the interchangeability of their gold coins; and for this purpose they recommend the adoption of gold coins which shall be either a multiple or a simple fraction of a unit consisting of 0.33437 gram of gold 0.900 fine. This unit, which represents twenty cents, or one-fifth of a dollar, United States gold, has been popularly called the American franc. Irrespective, however, of the contemplated ultimate unification of standards of American gold coins, the plan, reduced to its simplest meaning, involves the creation of international safe-deposit boxes, where gold may be kept under the guardianship of several American governments, signatories of the treaty. The International Gold Clearance Fund Treaty by its terms covers only the American nations; but it contains a principle, the discussion of which has lately attracted wide attention and which may prove to be of incalculable value to the world in the future.

Nor should we overlook what has been accomplished in extending the practical acceptance of the principle of the arbitration of commercial disputes. In the program of the Inter-American High Commission this subject has occupied a prominent and permanent place. A substantial achievement was recorded, when, on April 10, 1916, a plan, agreed upon by the Chambers of Commerce of the United States and Buenos Aires, was formally put into effect. The results have been most gratifying; and agreements have since been made between the United States Chamber of Commerce and the national Chambers of Commerce of Uruguay, Ecuador, Panama and Guatemala. Similar agreements are in process of negotiation with the Chambers of Commerce of Honduras, Peru and Montevideo, and one with that of Asunción has just been signed. Much yet remains to be done to give legal certainty, stability and efficiency to the system. Especially is this the case in the United States, where the archaic rule permitting the disregard of arbitral clauses still pre-

vails. This rule should be superseded by legislation, similar to that which exists in most other countries, making commercial arbitration, under the supervision of the courts, an integral part of legal procedure. On this question I feel that I can add nothing to the argument so comprehensively and cogently presented in the recent volume on "Commercial Arbitration and the Law," by Mr. Julius Henry Cohen of the New York Bar.

The Central Executive Council has had in its work the active and hearty coöperation of various bodies, such as the American Bankers' Association, the Committee on Commercial Law of the Conference of Commissioners on Uniform State Laws, the United States Chamber of Commerce and the National Foreign Trade Council. It is gratifying to bear testimony to the aid and support thus rendered.

At the present hour, when we are accustomed to think in billions, unfortunately, I may say, of accumulated and accumulating debt rather than of accumulated and accumulating treasure, I trust that I shall not seem to sound a discordant note if I advert to the strict economy practiced by the Inter-American High Commission in its expenditures. So far as concerns the Treasury of the United States, the entire cost of the Commission, since it began its work in 1915, including the visit of the United States Section to Buenos Aires in 1916, represents an annual average hardly equal to the cost of two large public dinners; and when I speak of expenditures, I include not only salaries, but furniture and equipment, stationery and printing, the use of the telegraph and the telephone, and expert assistance in law and in languages. The smallness of the expenditure, which is out of all proportion to the work actually done, is to be ascribed not only to the voluntary services rendered by individuals and by public bodies, but also and in the main to the devotion of the permanent working force and the exceedingly moderate compensation which it receives.

The Second Pan-American Financial Conference met in Washington on Monday, January 19, 1920. Its formal business sessions ended on Friday, January 23d. There were, however, on the official program certain additional exercises, the last of which was a dinner given to the foreign official delegates by the Pan-American Society of the United States at the Waldorf-Astoria, in New York, on the

evening of Tuesday, January 27th. More than five hundred persons were present at this banquet.

All the American Republics were officially represented in the Conference, except Costa Rica, which had no delegate because the United States has not as yet recognized its existing government. At the head of the delegations from Argentina, Colombia, Haiti, Nicaragua, Paraguay, Peru, Salvador and Uruguay, were their Ministers of Finance. Guatemala's delegation was headed by her Minister of Foreign Affairs. A similar position in the delegations from Cuba, the Dominican Republic, Ecuador and Mexico, was occupied by their diplomatic representatives at Washington.

As in the first Conference, the work, with the exception of addresses, was performed by group committees and a committee on resolutions. The presiding officer was the Secretary of the Treasury of the United States, the heads of the various foreign delegations being vice-presidents. By a group committee is meant a committee assigned to a particular country. Each country had such a committee, consisting of its official delegates, usually three in number, and a group of citizens of the United States, usually to the number of fifteen or sixteen, and a secretary. The United States group, it may be observed, though an unofficial body, is designed to continue in existence, for consultative and other purposes.

The group committees were very active bodies, working incessantly and very earnestly, in order to prepare and to present to the Conference, within the brief space allowed, a comprehensive report on the financial, industrial and commercial situation in the respective countries, with recommendations as to what particular measures should be adopted to meet their various needs. All committee reports and all proposals were referred to the Committee on Resolutions, whose report was presented to the Conference on the morning of Friday, January 23d. With the adoption of this report, the formal sessions at Washington came to a close.

The report embraced eighteen resolutions, by the first of which, with a view more definitely to indicate its constituency and sphere of work, the title of what was previously called the International High Commission was changed to Inter-American High Commission. To this body the resolutions specifically referred, for study or for action, various matters concerning which it was not practicable for the Conference itself to make a definitive recommendation. These

included railway transportation, uniformity of bills of lading, postal facilities and cable, telegraph and wireless communication; uniformity and relative equality in laws and regulations governing the organization and treatment of foreign corporations; uniformity of laws on the subject of checks; the question of the best method of avoiding the simultaneous double taxation of individuals and corporations as between American countries, and that of the creation of an Inter-American tribunal for the adjustment of questions of a commercial or financial nature involving two or more American countries, and the determination of such questions by principles of law and equity. The Commission was also requested to continue its efforts to bring about the further adoption of the International Gold Clearance Fund Convention. The subject of maritime transportation was referred to the United States Shipping Board.

By another resolution the Conference recommended that where restrictions existed under the laws of States of the United States, which in effect prevented the operation of branches of foreign banks within their jurisdiction, such restrictions should be so modified as to permit the establishment of branches of banks of the Latin-American countries, under proper regulations, so as to insure equality of treatment. This resolution was prompted by the fact that United States banks, both National and State, have been permitted to establish branches in various Latin-American countries.

The Conference recommended the increased use of acceptances for the purpose of financing transactions involving the importation and exportation of goods, at the same time expressing the hope that the United States would open a constantly widening market for the long-term securities of American countries. It also recommended that the banking interests of the United States study the possibility of financial relief to Europe by repaying Latin-American obligations held in Europe by means of new loans granted in the United States to the respective Latin-American countries.

Yet other resolutions dealt with the subject of patents and copyrights, advising early and favorable action by all non-ratifying governments on the conventions adopted by the International American Conference at Buenos Aires in 1910; with the subject of trade-marks, urging the prompt ratification of the Buenos Aires convention of 1910 by all the governments that had not so far approved it, and suggesting that, pending the establishment of the International

Bureau at Rio de Janeiro, consideration be given to the use of the Havana Bureau by countries of the southern group that had ratified the convention; with the subject of weights and measures, recommending that the Metric System be universally employed, and that, pending the attainment of that end, articles weighed and marked, and shipping documents prepared, according to the system of weights and measures now prevailing in the United States, be accompanied with statements giving the equivalents under the Metric System; with the subject of a simultaneous census, recommending that such an one be taken in all the American countries at regular intervals, not exceeding ten years, in harmony with the system prevailing in the United States, and that uniformity should be observed in the preparation of statistical works; and with the arbitration of commercial disputes, advising that the plan put into effect between the Bolsa de Comercio of Buenos Aires and the Chamber of Commerce of the United States in 1916 be extended to all the American countries, and that legislation be adopted, wherever it is now lacking, for the purpose of incorporating the arbitral settlement of commercial disputes into the judicial system, to be carried out under the supervision of the courts.

The Conference, recognizing the value of the services of commercial attachés, strongly urged a substantial extension of the system, and declared that, in so doing, it intended "to express its sense of the importance of appropriate training, linguistic and otherwise, for all branches of the foreign service, as a means of developing and facilitating commercial and financial relations."

The Conference recommended that the Webb Law, which to a certain extent permits combinations in the export trade, be so amended as to permit American companies, importing or dealing in raw materials produced abroad, to form, under proper governmental regulation, organizations to enable such companies to compete on terms of equality with companies of other countries associated for the conduct of such business. At the same time the Conference resolved that it was in the interest of all nations that there should be the widest possible distribution of raw materials, and that the importation of such materials into any country should not be prevented by prohibitive duties.

The foregoing summary of the resolutions of the Conference suffices to indicate the character and scope of its work. Looking to the

future, it may be affirmed that work such as that in which the Pan-American Financial Conferences and their permanent organ, the Inter-American High Commission, are engaged, is of incalculable importance. The American Republics cover a vast area with an aggregate population of almost 200,000,000. They represent all varieties of soil, of climate and of resources. Not in any sordid sense, but in the sense of contribution to the comfort and convenience of all men, through sharing the benefits of what the earth produces, it may be said that the future lies with the Western Hemisphere, and that its development has just begun.

THE DECLARATION OF PARIS

By CHARLES H. STOCKTON

Rear Admiral, U. S. Navy, retired

The Declaration of Paris of 1856 reads as follows:

- (1) Privateering is and remains abolished.
- (2) The neutral flag covers enemy goods with the exception of contraband of war.
- (3) Neutral goods, with the exception of contraband of war, are not liable to capture under an enemy's flag.
- (4) Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient to prevent access to the coasts of an enemy.

This declaration was directly and indirectly caused by the Crimean War, beginning in 1854 and ending in 1856, which war was a result of the war between Turkey and Russia, which began in October, 1853.

The ostensible cause of this latter war was a dispute which had arisen upon the custody of the Holy Places in Jerusalem. The real cause was the intention of Russia to begin the dismemberment of the Turkish Empire in Europe. The Czar of Russia suggested in January, 1853, to the British Ambassador at St. Petersburg that England might receive Egypt and Crete as her portion of the proposed result. France and England were ready, however, for various reasons, to come to the assistance of Turkey, while Count Cavour, in order to increase the prestige and political position of Sardinia, was desirous of joining the Anglo-French Alliance.

Before the war actually occurred, during the time of its foreshadowment, the commercial neutrals in Europe, then mainly the Scandinavian Powers, began to initiate movements for protecting and fostering the lucrative trade afloat which follows in the train of war and from which they had benefited in the past. On January 2, 1854, Sweden, then united with Norway, and Denmark addressed identical dispatches to the actual and possible belligerents. Their dispatches announced in case of war, the steadfast adherence on the part of

these Powers to "a strict neutrality founded in good faith, impartially, and an equal respect for the rights of all the Powers" which would in time impose on the Kings of Sweden and Denmark certain obligations. These were to abstain from participation in the war, direct or indirect; to admit to their ports the vessels of war and merchantmen of the belligerents under certain restrictions; to absolutely refuse admittance to privateers; to accord to belligerent vessels facilities for the supply of stores not contraband of war; to exclude prizes from their ports except in cases of distress. On the other hand, the advantages they claimed were to enjoy in their commercial relations with the countries at war all securities and all facilities for their vessels, as well as for their cargoes, with the obligation at all times for such vessels to conform to the regulations generally established and recognized for special cases of declared and effective blockades. The dispatches concluded with the statement that "Such are the general principles of the neutrality adopted by His Majesty the King in the event of war breaking out in Europe. His Majesty the King flatters himself that they will be acknowledged as in conformity with the Law of Nations."

These declarations of neutrality were notified by Denmark to the United States of America on January 20, 1854, and by Sweden on January 28, as well as to the other neutral Powers. Secretary Marcy, then Secretary of State of the United States, replied in both cases on the 14th of February, that the views expressed by the two governments were regarded by the President "with all the interest which the occasion demands." The Danish *Chargé* at Washington was further notified that the United States felt "deep solicitude in the events now transpiring in Europe, not only on account of the general anxiety they occasion to those Powers more nearly exposed to the menaced evils, but also as having a most important ulterior bearing upon the United States."

In the meantime, the Czar of Russia had been endeavoring to obtain the consent of the United States to the issue of Russian letters of marque to citizens of the United States. Reports to Europe from America tended to show that public opinion in the United States was favorable to the allies, but the question of service of Americans in Russian privateers presented difficulties. So far as I have examined the matter, I cannot find that any Americans accepted letters of marque from Russia which would have been, under our neutrality

laws of the time, unlawful. Considering the naval predominance of the allies in this war, such undertakings would have been dangerous and unprofitable.

The Scandinavian countries were, in accordance with their historic position, in favor of the freedom from capture of enemy goods in neutral ships. This had also been the historic position of France, but not of England. For the proper exercise of her sea power England had always maintained the right to seize enemy goods not contraband on neutral vessels, as she considered the destruction or the crippling of an enemy's commerce and her trade, however carried on, as a legitimate and proper objective in maritime war.

However, it was an evident necessity in the war against Russia about to be entered into by France and England as allies, that some common ground should be agreed upon by the fleets of both countries and that similar instructions should be issued to the naval officers in command of both fleets. France held to her traditional policy, the policy of Napoleon in the wars which bear his name, and which represented a life and death struggle with England. There was, however, a party in England who wished to make war softer afloat, and to lessen its burdens upon commerce. It consisted principally of the disciples of the Manchester School of the day. As a result, after much dilly-dallying, it was agreed to issue instructions to the navies of both Powers, to allow enemy goods upon neutral ships to go free from capture. This at the end of the war resulted in the adoption of the Declaration of Paris. Of this Sir Francis Piggott, a recent writer upon the subject, says:

The Declaration of Paris was the product of temperament. The grave problems which it professed to settle were not argued on their merits in the open; the two sides of the question were never discussed; the conclusions were come to in secret.

In the discussion between the French and English foreign offices, considerable reference was made to the general attitude of neutrals, especially the Scandinavian Powers and the United States of America. As a matter of fact, Sweden and Russia, after the League of 1780 had been dissolved, had practically abandoned the doctrine of free ships, free goods. The United States, though in the main favoring that doctrine, had at times in both its political and judicial departments acted otherwise. In the Jay Treaty with England in 1796 the

doctrine of seizing enemy property on neutral ships had been expressly recognized. In the letter of Jefferson to Mr. Genet of the 24th of July, 1793, he says:

The French complain that the English take French goods out of American vessels, which is said to be against the law of nations, and ought to be prevented by us. On the contrary, we supposed it to have been long ago an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend.

The trade between Russia and Great Britain before the declaration of war between the two countries was ten times greater than the trade with Russia and any other country. Piggott says of this:

The trade consisted principally of flax and tallow: Ireland received large quantities of flaxseed for her linen industry. It was said authoritatively that as a result of the custom of cash payments, the Russian interest in consignments did not exceed 15 per cent. What the proper designation of such trade is, whether enemy or British and how it should be dealt with in war, were serious questions which would inevitably have to be faced by the (British) Government. Russia had assured the merchants of her protection. It is not surprising, therefore, that they should inquire, so soon as war was seen to be inevitable, what protection they would receive from their own country.

The law officers of the Cabinet were duly consulted, and gave it as their opinion that persons resident and trading in an enemy country are treated as enemies, and their property is liable to seizure on the sea, even on board of a neutral vessel, "whether such persons be by birth neutrals, allies, enemies or fellow-subjects." This was the law of war, but it was not in accord with the proposed policy of the allies. It was conveyed in a note to the British Consul at Riga and was known as the Riga Dispatch.

Finally, policy became paramount and the laws of war upon the question of the carrying trade during the war that was imminent were set aside in the Declaration to the Neutrals by the Queen, issued March 28, 1854, which was followed immediately by the declaration of war. In this declaration are found the following paragraphs:

To preserve the commerce of neutrals from all unnecessary destruction Her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the Law of Nations. . . .

But Her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel, unless it be contraband of war.

This settled the question of the Baltic trade by English and other merchants. As a result, with the aid of Prussia the English blockade of the Baltic was nullified. Between Prussia and Russia a perfect system of transit of goods from Russia through Prussia to England was arranged. Russia is said to have developed her interior communications to a degree of perfection for those days that was hardly anticipated. This was by means of most excellent roads to the Prussian frontiers. Prussia abolished her land import duties and constructed a railway to Memel, just across the frontier. The result was that vast stores of Russian produce, such as tallow, hemp, flax and linseed went to the Prussian ports whence they were shipped on board neutral vessels to England. In this manner the blockade of the Baltic ports of Russia was neutralized and the fundamental principles on which (as has been so often proven) the effective waging of war depends, was set aside. The doctrines of continuous voyages and ultimate consumption, so drastic in their results in modern times, were set aside and it was, in fact, a practical example of that anomaly "a military war and a commercial peace."

All of this shows the close connection of the merchant marine with the successful or unsuccessful prosecution of war. It is so closely allied with success that it becomes one of the tools of war and war trade and hence beyond the rigid limits of private enterprise and control. Neither in the dangers that surround it that are inherent especially to modern wars, nor in the value of its essential services rendered in matters of transport of food, munitions, supplies and armed forces, should it fail in the recognition, protection and reward from the governments of the countries whose flag it carries.

It has been well said by an English writer that Great Britain "now realizes that the merchant marine is but a branch of the Royal Navy. From this point of view the ship-owner and the interests of shareholders stand in more favorable positions than the proprietor of any other means of transport or than the owner of the goods transported." It is hardly necessary to add that the term "private property at sea" no longer applies to the merchant marine in respect to its capture than does the seizure of railroads on shore; neither are or should be exempt from capture, seizure and use in time of war. The prevention

of the transport of munitions or food, whether considered as contraband or as a contribution to the common stock of a country, has more than once had a vital effect during the late war. Above all, it has been shown by recent experiences that the supreme control of the mercantile marine must in all its movements and direction rest with the nation and its general government.

The hostilities of the Crimean War having been brought to a close, the Congress of Paris was convened on the 28th of February, 1856, to settle upon a general treaty of peace, which was finally signed on the 30th of the following March.

The signers of the treaty of peace were reunited in conference on the 16th of the following April and agreed to the Declaration of Paris as it now stands, inviting the adherence of all other Powers and making the Declaration applicable in its workings to only those Powers who sign or who should in future days accede to the Declaration.

The signers of the Declaration and of the protocol of the meeting of the conference in which it was adopted were Austria, France, Great Britain, Prussia, Russia, Sardinia and Turkey.

In the proposition of Count Walewski, the president of the conference, in recognition of the common interest and desirability of the maintenance of the indivisibility of the four principles of the Declaration, it was agreed "that the countries which have signed the Declaration or may adhere to it, cannot in justice enter into any arrangement relating to the rights of neutrals in time of war which is not based upon the four principles of the Declaration. This resolution, however, was not to have any retroactive effect nor to invalidate existing conventions."

The matter of the Declaration of Paris does not seem to have been brought before the House of Commons of Great Britain, but it was the subject of a debate in the House of Lords and many speeches were made against the adoption of the Declaration, because in its surrender of the right to seize goods of the enemy, not contraband, on the ships of a neutral state. No vote apparently was taken upon the subject, and the Declaration with its important principles was accepted by Great Britain without, so far as I know, any formal qualification or confirmation.

The countries not represented at the Congress of Paris were duly notified and invited to adhere, and a large number of them accepted in the three following months. Owing to the conditions of adherence,

that all of the four principles must be accepted as one and indivisible, four states stood out, the United States, Spain, Mexico and Venezuela, all on the matter of the abolition of privateering. Spain finally adhered on the 18th of January, 1908, and Mexico on the 13th of February, 1909. The United States and, I think, Venezuela still hold out. As a consequence, notwithstanding that the United States offered at one time to adhere, an offer which will be discussed farther on, the Declaration of Paris cannot be considered as accepted international law.

There was but one point, that of privateering, on which the United States declined to adhere but consented to do so, provided the amendment proposed by Mr. Marcy, to couple this abolition with the abolition of the right of capture of private property at sea in time of war was accepted by all the Powers. It is extremely doubtful whether the United States could legally adhere without the consent of the Senate.

The United States formulated its declination to a convention upon the subject in the way required for treaties, in a long answer signed by the new Secretary of State, Mr. William L. Marcy. As to this answer, says Sir Francis Piggott, "It may be divided roughly into two parts: that in which it sets out very clearly and remorselessly all the weak points of the Declaration; and that which is devoted to the advocacy of privateering, and the humanity of private property at sea."

The second and third principles of the Declaration had become a policy urged by the United States for years, a policy not always followed, as I have mentioned elsewhere, either in treaties or judicial decisions.

As to the fourth principle in regard to blockades, Secretary Marcy said that this principle "can hardly be regarded as one falling within that class with which it was the object of the Congress to interfere, for this rule has not for a long time been regarded as uncertain, or the cause of any deplorable disputes. If there have been any disputes in regard to blockades, the uncertainty was about the facts, but not the law. . . ." What is to be judged "a force sufficient really to prevent access to the coast of the enemy has often been a severely-contested question; and certainly the Declaration which merely reiterates the general undisputed maxim of maritime law, does nothing toward relieving the subject of blockades from that embarrassment. What force is requisite to constitute an effective blockade remains as

unsettled and as questionable as it was before the Congress at Paris adopted the Declaration." This note, the second on the subject by Secretary Marcy, is quite long and will be found in Piggott's treatises, Moore's Digest, etc. Its arguments in favor of privateering and the immunity of private property and vessels of an enemy from capture, has, however, lost much of its force by the conditions of latter day maritime warfare.

It remained for the London Naval Conference in 1907-1908 in the first chapter of its Declaration to discuss and define the question of blockade in a proper and at the same time exhaustive manner. A strong and growing party in England, in view of the experience of the later wars and of the future possibilities of maritime war, advocates a withdrawal from a continued adherence to the Declaration of Paris. It has been urged that such a withdrawal is legitimate and proper at any time, as it is an agreement without the form or qualifications of a treaty, and that such a withdrawal may be feasible and desirable.

The conditions of modern warfare, as shown by the late World War, have extended the use of materials that are now classed as contraband, to such an extent, that the articles that are not directly or indirectly of contraband nature (articles that formed what was called the free list), make but a meager collection with an uncertain future. This robs the dictum of free ships, free goods, of much force, and to this is added the plainly recognized difficulty of examining merchant vessels in the open seas. This difficulty is plain, not only arising from stormy weather and high seas in the examination of small vessels with simple cargoes, but presents in the case of large vessels with their great and complex cargoes almost insurmountable difficulties, added to by the existence or growth of the parcel posts of mail vessels, when we consider what may arise from the exposure to both aerial and submarine warfare, the former of which is sure to develop in the future, and the continued existence of the latter in future warfare always a possibility until the arrival of the much-to-be-desired millennium when human passions and practices will pass away for the good of mankind.

It may be interesting now to follow the action of the United States since the Marcy note written in answer to the proposal for adherence made by the European Powers signatory to the Declaration of Paris.

There was no general or concerted reply to the Marcy note or its proposed amendment to the Declaration. The French Government made no objection at the time to the proposed amendment. Russia favored it; Prussia, Italy, and the Netherlands were supposed to be friendly to it, while Great Britain was, it is understood, directly opposed to it.

Before any negotiations, however, as to the Marcy amendment had gotten under way, President Pierce, in whose administration Marcy was Secretary of State, was succeeded in 1857 by President Buchanan, who had been Minister to England during the negotiations between England and France on the subject, and who was to an extent familiar with the arrangements concerning the maritime warfare proposed to be conducted by France and England during the Crimean War. Mr. Buchanan after his accession directed the negotiations to be suspended until he could examine all of the questions involved. This suspension of the negotiations concerning the Declaration of Paris with the United States continued during the entire administration of Buchanan (see Moore's "Buchanan").

Upon his assumption of office, President Lincoln found the matter in this unsettled state. In agreement with the members of his Cabinet, Mr. Lincoln was desirous of placing the loyal States and his government in the most favorable and conciliatory light to European states and to their interests afloat during the war for the Union. Secretary Seward wrote to Mr. Dayton, then Minister to France:

The United States have never disclaimed the employment of letters of marque as a means of maritime war. The insurgents early announced their intention to commission privateers. We knew that friendly nations would be anxious for guarantees of safety from injury by that form of depredation upon the national commerce. We knew also that such nations would desire to be informed whether their flags should be regarded as protecting goods not contraband of war, of disloyal citizens found under them, and whether the goods, not contraband, of subjects of such nations would be safe from confiscation when found in vessels of disloyal citizens of the United States.

Seward did not regard the abandonment of privateering as a matter of importance to the United States, and the maritime history of our country since his time has proved that he was right. We could not secure any great matter by barter with his renunciation as a con-

tribution of value, but he also, as Mr. Henry Adams says, "believed that the Union was vitally interested in precluding every excuse for interference in Europe."

It will be recalled that in 1856 England and France pledged themselves to enter into no arrangement with each other or any third Power, unless it started from the four articles of the Declaration as a whole and indivisible.

The offer of the United States to adhere to the Declaration of Paris naturally attracted the attention of the maritime European Powers. Lord John Russell, the Minister of Foreign Affairs of Great Britain, suggested to the Emperor Napoleon that both belligerents, North and South, should be invited "to act upon the principles laid down in the second and third articles of the Declaration of Paris of 1856, which relates to the security of neutral property on the high seas."

The French Government responded favorably to this proposition of the British Government, and Mr. Thouvenel, the French Foreign Minister, suggested that a friendly communication should be made to both governments in the same language, "that the Governments of Great Britain and France intended to abstain from all interferences, but that the commercial interests of the two countries demanded that they should be assured that the principles with respect to neutral property laid down by the Congress of Paris (of 1856) should be adhered to—an assurance which the two governments did not doubt they should obtain, as the principles in question were in strict accordance with those that had been always advocated by the United States."

The diplomatic conversation that arose in this matter made a lasting impression on the mind of Mr. Charles Francis Adams, then Minister to Great Britain, to such an extent, says his son, Mr. Henry Adams, his private secretary, that it shook his mind, not only as to the friendliness of the British Government, but also as to the honesty or straightforwardness of its ministers with whom he dealt. "Palmerston and Russell were the chief agents in the affair, and their wishes to prevent the United States from acceding to the Declaration as a whole was," Henry Adams says, "the cause of the whole difficulty in the negotiations on the subject." The mystery that neither Seward nor Adams could penetrate was the motive that actuated the British Cabinet.

The matter was complicated by the fact that Mr. Charles Francis Adams did not propose a single adherence to the Declaration of Paris

which could not have been refused by the Powers concerned and could have been made by a formal note from the Executive Department of our Government. He wisely and I think necessarily asked for a convention, because the Senate of the United States should have some instrument to act upon and ratify in order to make the Declaration legal so far as the United States was concerned with it in municipal law.

Mr. Henry Adams deduced from the action of the British Government then existing, that they proposed in case of the permanent division of the United States, to revive their old claims, which were put aside by the Declaration of Paris, for belligerent rights as to enemy goods in neutral vessels, a right which Lord Palmerston had stated in the House of Commons on the night of March 18, 1862, had been abandoned because a persistence in 1854 would have added a war with the United States to the war they were then waging with Russia. Lord John Russell was also one of the objectors to the Declaration of Paris at the time of its adoption.

As 'the British Government had recognized the Southern States as a belligerent, Great Britain was not obliged to consider her privateers as pirates, unless the Confederate Government had accepted the Declaration of Paris as a whole, including the first proviso, and then had violated its requirements. Whatever attitude the United States assumed toward the Southern cruisers and privateers, was based upon other grounds than that of the mandates of the Declaration of Paris, and hence there was an intentional or unintentional misinterpretation of their motives, and France and England refused to accept an adherence that would be considered applicable to the existing war.

Lord Lyons, in a dispatch to the home government, said that he doubted whether the Senate of the United States would approve of a convention at that time abolishing the right of privateering by the United States.

The statement, made by English writers that the intention of the United States in proposing the adoption by them of the Declaration of Paris, which was met by the Anglo-French proposition to adhere only to the second and third rules of the Declaration, was for the purpose of preventing the recognition of the South as belligerents, falls to the ground chronologically, as they accepted the recognition by Great Britain of the Southern Confederacy as belligerents as a

fact before the conclusion of the negotiations. The two points of the Declaration presented were already a part of the policy of the United States and were not properly presented under the requirements of the protocol of the Congress of Paris, which required the four rules to be presented as an indivisible body.

Although Great Britain and France did not recognize the independence of the Southern Confederacy, they considered it desirable to obtain from it officially a recognition of the second and third articles of the Declaration. This was accomplished by an interview with Mr. Jefferson Davis, as President of the Confederate States, by Mr. Burch, British Consul at Charleston, accompanied by M. Bettigny, the French Consul. As a result of this interview, Consul Burch reported that "It was soon determined that Congress should be invited to issue a series of resolutions, by which the second, third and fourth articles of the Declaration of the Treaty of Paris should be accepted by the Confederate States." These resolutions were preceded by a first resolution which read as follows: "That we maintain the right of privateering as it has been long established by the practice and recognized by the Law of Nations." The other three articles followed in accordance with the terms of the Declaration of Paris. The resolutions were passed on the 13th of August, 1861, and approved by Mr. Davis on the same day.

It might be added here that the convention, formally proposed by Mr. Adams to Lord John Russell after the recognition of the Southern Confederacy as a belligerent Power, contained no reference to any action toward Confederate privateers. The preamble or declaration proposed by Lord John Russell, to which consideration was refused very properly by Secretary Seward as a matter of national self-respect, read as follows:

In affixing his signature to the Convention of this Day between Her Majesty, the Queen of Great Britain and Ireland, and the United States of America, the Earl Russell declares, by order of Her Majesty, that Her Majesty does not intend thereby to undertake any engagement which shall have any bearing direct or indirect on the internal differences now prevailing in the United States.

In the Spanish-American War the United States followed the principles of the three last articles of the Declaration of Paris by official notification.

During the great World War in the code of maritime warfare promulgated by the United States Navy Department, the second and third articles of the Declaration of Paris were literally included, while the fourth article was in principle also incorporated.

INTERNATIONAL AERIAL NAVIGATION AND THE PEACE CONFERENCE

BY ARTHUR K. KUHN

*Counsel to the Peace Conference Committee of the League to
Enforce Peace*

Aërial navigation, owing to the unusual impetus given to it by the Great War, now promises to result in one of the most profound influences affecting the conditions of modern civilization. It is difficult to realize that only twenty years have elapsed since the program of the First Hague Conference proposed "to prohibit the throwing of projectiles or explosives of any kind from balloons, or by any similar means"; and that one of the express causes inducing the nations of the world to agree to the proposal was the undeveloped character of the art of aviation.¹ Although the treaty was short-lived and expired in 1905, the art had so greatly advanced that a complete change of the attitude of many governments had taken place and the renewal of the treaty was out of the question.

The opening of the war inaugurated a feverish competition to perfect every possible type of aircraft for use in attack as well as for reconnaissance. The stern demands of military tactics introduced an entirely new phase in the development of aërial navigation.²

¹ Report of Captain Crozier to the United States Commission of the First Hague Conference. Holla, *The Peace Conference at the Hague*, p. 95. The reasoning of the subcommittee correctly anticipated by almost two decades some of the occurrences of the war. Captain Crozier reported that the action taken for humanitarian reasons was founded upon the opinion that balloons and other aircraft, as they then existed, constituted such inaccurate means of injury that their use would be dangerous to noncombatants; that "the persons or objects injured by throwing explosives may be entirely disconnected from the conflict, and such that their injury or destruction would be of no practical advantage to the party making use of the machines."

² "Ten times as many years would not have produced the same advance if the years had been devoted to peaceful pursuits and commercial uses of airplanes had been the only incentive to inventors and producers." Secretary of War Baker in the Introduction to Captain Arthur Sweetser's *The American Air Service*.

So long as war is possible, aircraft will continue to be developed as instruments of war, especially in connection with radiotelegraphy, radiotelephony, photography and other correlated scientific means. Fortunately the arts developed in war are quickly adapted and applied to the demands of peace; and of this truth, aërial navigation furnishes an excellent example. The year following the armistice witnessed many remarkable achievements in air navigation, demonstrating its future commercial value as a new means of intercommunication and transportation. The crossing of the Atlantic Ocean from the mainland of the United States to England, via the Azores and the European Continent, was closely followed by a continuous flight from Newfoundland to Ireland in about fifteen hours. The distance between New York and San Francisco and return was traversed in slightly more than forty-eight hours. The use of aircraft for the regular transportation of mails and passengers increases day by day both here and abroad. An art thus expanding by leaps and bounds requires a wise system of legal regulation and control, both in its own interest and for the safety of the community. Aërial navigation, like the navigation of the seas, is international in scope, and its adequate regulation by law presupposes the coöperation of nations through international conventions. This has long been recognized both by scientific experts and by jurists.³ It was also accepted as a basic principle by the official International Conference upon Aërial Navigation held in Paris upon the call of the French Government in May, June and November, 1910,⁴ and also by the unofficial Conference for the Regulation of Aërial Locomotion held at Verona in June, 1910.⁵

If the war had not intervened, the French Government would have convened another diplomatic conference to elaborate a code of international air law, or at least to establish a *modus vivendi* for international flying. The Conference of 1910 adjourned without finally approving a draft, though several drafts by Fauchille, Bar and others were discussed and referred for further deliberation. When the Peace Conference convened, in January, 1919, it appointed, among its many other subcommittees, a Commission on International Air Navigation

³ Pesce in *Journal de droit international privé*, 1911, p. 115; Catellani, *Le droit aérien*, pp. 33-44 (translated by Bouteloup from the Italian).

⁴ *Journal de droit international privé*, 1911, p. 986.

⁵ De Valles in *Revue juridique internationale de la locomotion aérienne*, 1910, p. 175.

upon which representation was given to each of the five Great Powers, together with Belgium, Brazil, Cuba, Greece, Portugal, Roumania and Serbia.

THE CONVENTION RESTRICTED TO TIME OF PEACE

It is worthy of emphasis that diplomatic congresses held in times of peace often deal with the conduct of warfare, while conferences held at the close of a great war usually do not. The Congress of Vienna in 1815 and the Berlin Congress of 1878 dealt principally with political and territorial readjustments, while the Brussels Conference of 1874 and the Hague Conferences of 1899 and 1907 attempted to regulate the conduct of war. None of the many activities of the Peace Conference of 1919 was directed toward the regulation of warfare, or even of neutral rights in time of war. Perhaps three main causes may be assigned. First, because the gross violations of the laws of war by the Central Powers undermined confidence in the old system by which the nations consciously endeavored through self-denying ordinances to make the conduct of war more humane. Second, because the tremendous task of making the necessary territorial, economic and political readjustments absorbed the attention of the Conference. Third, because the Conference endeavored to establish international relations upon a new basis, with the object of eliminating, as far as possible, the causes of war.

The Commission on Air Navigation was one of a number of commissions created under the authority of the Peace Conference having nothing whatever to do with the adjustments of the war itself. Its labors, so far as they were connected with the work of the Peace Conference, consisted of the regulation of the new means of intercourse between nations in such a manner as to promote friendly relations and to avoid friction. The Convention relating to International Air Navigation⁶ is reported to have been signed on October 13, 1919, by all the Allied and Associated Powers, excepting Japan and the United States.⁷ The convention is restricted wholly to peace times and does not affect the freedom of action of the contracting states in time of war, either as belligerents or as neutrals.⁸

⁶ U. S. Senate Document No. 91, 66th Congress, 1st Session (French and English texts).

⁷ See the *London Times*, October 16, 1919.

⁸ Convention, Art. 39.

SOVEREIGNTY IN THE AIRSPACE

The convention recognizes that every state has complete and exclusive sovereignty in the airspace above its territory and territorial waters.⁹ But each state undertakes in time of peace to accord freedom of innocent passage to foreign aircraft without distinction as to nationality, provided the conditions of the convention are observed.¹⁰ The convention thus sanctions the principle championed by Westlake at the 1906 session of the Institute, although at that time he could muster only three votes in support of his proposition. A large majority of the Institute were then in favor of a general declaration for the freedom of the airspace.¹¹ The attitude of English and American jurists and the practical developments of the war have now finally solved this *quæstio famosissima* in a manner which will probably be satisfactory to all. Any nation has the right to map out areas prohibited for military reasons or for public safety, but notice of such areas must be given to the central bureau and published. The fact that prohibited areas must apply alike to domestic as well as to foreign aircraft will serve as a counterbalance to any extreme view of military needs. The right of innocent passage is therefore practically assured.¹²

NATIONALITY OF AIRCRAFT

The convention determines the nationality of aircraft according to rules similar to those established for seagoing vessels. The aircraft possesses the nationality of the state on the registry of which it is entered. The owner must be a national; if the owner is a corporation, the president and two-thirds of the board of directors must be nationals.¹³ It therefore follows that aircraft cannot be validly registered in more than one country at the same time.

⁹ Convention, Art. 1.

¹⁰ *Ibid.*, Art. 2.

¹¹ See *Annuaire de l'Institut du droit international*, 1906, p. 305.

¹² The legal status thus created may be compared to the right of vessels of one state freely to navigate an international river flowing from or through its own territory into a foreign state. Jefferson, while Secretary of State, relied upon this right in his negotiations with France, basing it upon "the law of nature and nations." Moore, *Digest of International Law*, Vol. 1, p. 624. The present writer suggested it as an analogy for international rights in the airspace, as early as 1908. *Proceedings, American Political Science Association*, 1908, p. 87; this *JOURNAL*, 1910, p. 114, "The Beginnings of an Aërial Law."

¹³ Convention, Arts. 6-7. This was not the rule in the draft proposed by Paul

No nation may permit the flight above its territory of aircraft not possessing the nationality of one of the contracting states.¹⁴ This marks an important variance from the rule of maritime shipping because vessels of all duly recognized countries are permitted to enter the territorial waters of other nations. The reason of the rule for aircraft is not to be sought in any intent to exercise indirect coercion upon states which have not yet ratified the convention, but in the fact that the right of free passage depends upon the strict observance of the conditions of the convention and upon the control which such observance affords. If the United States does not sign and ratify the convention, it would follow that our aircraft would be excluded from the territory of all the contracting states including Canada.

CERTIFICATES AND LICENSES

The issuance of certificates of airworthiness and the competence of officers and crew are matters within the jurisdiction of the contracting states so long as they observe the technical minimum standards set forth in the annexes. A permanent International Commission for Air Navigation is established which may vary these standards from time to time.¹⁵ Certificates which are issued or rendered valid by the state of the aircraft's flag must be recognized in all other states. It is therefore difficult to comprehend why a state should have the right to refuse such recognition to certificates and licenses granted in a foreign state to a citizen of the local state residing abroad. If a state is willing to concede recognition to certificates and licenses granted in other states, why should it not have sufficient confidence in its own nationals to permit them to make flights over their home territory after having conformed to the same standards? The discrimination seems unreasonable in view of the fact that the standard is intended to be technically uniform in all states. It is difficult to explain the rule except in the light of the jurisprudence of European countries where the *lex patriæ* exerts an influence in regulating the acts of nationals abroad, to an extent unknown to the English com-

Fauchille at the Paris Conference of 1910. Ownership was to control nationality, but aircraft might be registered in the country in which the owner resided. Fauchille's Draft, Art. 3, *Journal de droit international privé*, 1911, p. 990.

¹⁴ Convention, Art. 5.

¹⁵ *Ibid.*, Arts. 11-13; Annexes B and E.

mon law. Personal capacity in those countries is measured by national law; and yet there can be no question of the evasion of that law here, because of the uniformity of the standard.

The annexes also provide in detail for the marks and numbers which aircraft must carry, also the lights and signals, rules of airway and markings of aërodromes. Great care seems to have been exercised in the preparation of these rules; they give evidence of having been arrived at empirically by men practiced in the art.

The adoption of the convention by the United States would seem to require that all State legislation be superseded. The Connecticut statute of 1911, for example, provides that no airship shall be flown through or to any point in the State, unless registered within the State, such registration to be renewed annually. The licensing of operators is similarly placed upon a local basis. The flying privilege of a non-resident of Connecticut, even though qualified by the laws of his residence, is limited to ten days in any one year.¹⁶ It is curious to note that in the revision of 1918, the law is classified under the general heading of "Navigation," yet according to its tenor, aircraft are dealt with as though they were like automobiles traveling upon State routes and wholly subject to local law. Connecticut is entitled to the credit of having passed the first general law in the United States to regulate aërial navigation, doubtless through the efforts of its distinguished Governor, Simeon E. Baldwin, who himself showed deep interest in the early stages of the law of aërial navigation.¹⁷ But the tremendous progress which aviation has made since that time and the achievement which it promises for the future have already rendered such legislation out of date. The speed at which aircraft can and must go, the free choice of route which they have, and the distances they now traverse without landing, all tend to destroy any analogy which may have existed with vehicles traveling upon the land.

NATIONAL LEGISLATION REQUIRED

Congress must deal adequately with the entire subject of air navigation in the event that the present convention is ratified and its terms made effective within the United States. Consider, for example, the provision permitting aircraft to cross the territory of another con-

¹⁶ Connecticut Laws of 1911, Chap. 861; Revision of 1918, sec. 3115.

¹⁷ See his able article in this JOURNAL, 1910, p. 95.

tracting state without alighting, provided the international routes be followed and no signal be given to alight.¹⁸ Unless local law were superseded by federal regulation, there would be endless confusion caused by the local aerial police. The observance of the treaty in all its parts would be most difficult. So in regard to "ship's papers"; the annexes provide the details to be embodied in documents which aircraft must carry, which include the following:

- (a) certificates of registration;
- (b) certificate of airworthiness;
- (c) certificate of minimum technical skill for commanding officer and pilot;
- (d) licenses for pilots, navigators and engineers;
- (e) list of passengers;
- (f) bill of lading and manifest;
- (g) log book;
- (h) special license for wireless equipment.¹⁹

These requirements presuppose some coördination between the local and the national authorities, which federal regulation can alone provide.

Federal legislation will also be necessary to establish a policy relative to the restriction of the internal traffic to national aircraft. The convention does not *eo ipso* maintain such a policy, but leaves each state free to do so, evidently taking into account the legislation of many countries relating to coastwise maritime trade. Where the laws exclude foreign aircraft from the carriage of passengers or freight for hire between local points, aircraft of that state may be subjected to the same restrictions by a foreign state, even though the foreign state does not itself maintain the rule.²⁰

PATENT RIGHTS IN AIRCRAFT MECHANISMS

A provision which seems to have raised considerable opposition in this country is that which guarantees immunity to any foreign aircraft from seizure or detention while within the airspace or upon the territory of another state "on the ground that the construction or mechanism of the aircraft is an infringement of any patent, design,

¹⁸ Convention, Art. 15 and Annex D.

¹⁹ *Ibid.*, Art. 19 and Annexes A, B, C, and E.

²⁰ *Ibid.*, Arts. 16-17.

or model, duly granted or registered in such state.”²¹ This provision relegates all claims for infringement to the jurisdiction of origin. The purpose was clearly to remove unnecessary burdens upon aviation while still in its infancy. The claims for broad or basic patent rights are apt to be much more numerous in a new art than in one the principles of which have long been known and applied. Perhaps it was feared that the seizures or detentions might be so widespread as actually to interrupt the free development of aerial navigation. We do not know of any similar exemptions anywhere in favor of maritime commerce, nor is it apparent why, on principle, there should be greater leniency shown to the infringer of a patent for the design or construction of aircraft than to one who infringes a patent of another description. Presumably local procedure will guarantee the good faith of the action by requiring security in the event of seizure or detention; likewise, rebonding will ordinarily be provided for just as for libels in admiralty. If the Commission desired to insure against abuse of process causing discouragement of international air navigation, the condition of security might well have been exacted by the convention itself. If the owner of an aircraft desires to enter the jurisdiction of a foreign state, he should be willing to take the burden of its just laws. Many an owner of a patent right might hesitate in good faith before incurring the expense and inconvenience of testing his right against an alleged infringer in a foreign country, but if aircraft containing the protected mechanism enters the legitimate field of exploitation of the holder of the patent, the latter should be permitted to test or exercise his rights in his own jurisdiction.

PRIVATE INTERNATIONAL LAW

It is somewhat surprising to find under the title: “Rules to be observed on departure, on landing, and when under way,” a number of provisions not applicable primarily to the control of navigation, but rather to the choice of law competent to punish infractions and to determine private rights between persons traveling upon aircraft. Thus Article 23 provides: “The legal relations between persons on board an aircraft in flight are governed by the law of the nationality of the aircraft.” This rule will seem strange to lawyers unfamiliar with the principles of private international law in European countries.

²¹ Convention, Art. 18.

The French text is somewhat clearer than the English as it refers to transactions "*qui se forment . . . à bord*," thus limiting the rule to legal relations actually entered into on board an aircraft in flight. But even with this limitation, the rule operates in derogation of the established principles of private law. The same may be said of other provisions of Article 23 by which a state is deprived of jurisdiction to punish a crime or misdemeanor committed on board an aircraft in flight over its territory "except where such crime or misdemeanor is committed against a national of such state and is followed by a landing there during the same journey." On the other hand, each state undertakes to punish its own nationals for any violations of the rules laid down in the annexes relating to lights, signals, rules of the airway, ballast and other particulars of operation, irrespective of the territory over or upon which the violations were committed.²² The result is to give extraterritorial jurisdiction over violations committed by nationals of the state, which, of course, reverses the principle of criminal jurisdiction recognized throughout the United States.

In the United States, and indeed in other countries having a federal system of delegated powers, the treaty-making authority acts with caution in modifying a rule of private law otherwise reserved to the States. Wide differences of opinion have arisen in reference to the constitutional scope of the treaty-making power of the United States. While the United States Supreme Court has never declared a treaty to be void because in derogation of local law, yet a tendency is noticeable in that tribunal to interpret such treaties with great strictness.²³ Even with the constitutional question out of the way, the treaty-making policy of the United States has thus far been opposed to the direct regulation of private international law by treaty. It is to be

²² Convention, Arts. 24-25.

²³ See, for example, *Rocca v. Thompson* (1911), 223 U. S. 317, in which a treaty according the right to certain foreign consuls "to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs," was interpreted as not giving such consuls the right to be appointed administrators of the estates of the deceased. The constitutional question is involved in the treaty with Great Britain relative to migratory birds and in this connection the subject has been reviewed and discussed in a recent decision of the United States District Court in Arkansas. *United States v. Thompson*, 258 Fed. Rep. 257, Advance Sheets, September 25, 1919.

hoped that this policy will change with the expanding commerce of the United States. Much time and care have been given to the subject in negotiations with South American countries. Until some general policy has been determined, however, it would seem unsystematic and confusing to adopt rules of this character in highly specialized treaties such as the present, where the rules would be applicable only to acts and transactions taking place upon aircraft in flight.

THE INTERNATIONAL COMMISSION FOR AIR NAVIGATION

The convention provides for the organization of an international union for the administration of international air navigation and for the elaboration of legislation to be applicable to it from time to time. The organ of the union will be the International Commission for Air Navigation. Its organization is to be under the control of the League of Nations. Representation is measured somewhat after the principle adopted for the Assembly of the League. The five great Allies have each two representatives. All other contracting states have each one representative, the self-governing British Dominions and India counting for this purpose as states. The vote is taken according to states, but the five great Powers reserve to themselves the majority of the votes by the provision that each shall have "the least whole number of votes which, when multiplied by five, will give a product exceeding by at least one vote the total number of votes of all the other contracting states."²⁴

The Commission will select its permanent seat. The first meeting is to be held in Paris as soon as the majority of the signatory states ratify the convention. The Commission receives and acts upon proposals for amending the convention, or any of its annexes, collects and communicates to the various states information of all kinds concerning international air navigation and all correlated sciences and arts; publishes official maps and gives opinions on questions which the states may submit for examination. Amendments must be formally ratified by the states, but a modification of any of the annexes may be made upon a three-fourths vote, without reference to the contracting states.

²⁴ Convention, Art. 35.

CUSTOMS ADMINISTRATION FOR AIRCRAFT

The greatly extended use of aircraft for commercial transportation which now seems impending will require entirely new methods of customs administration. The convention essays to lay down certain rules by which the states are to coöperate in administering customs and in the prevention of customs fraud. Aircraft must depart from and alight only upon especially designated "customs aërodromes." Places for crossing a frontier are to be indicated on aëronautical maps. The inspection of documents is regulated in a manner analogous to marine vessels; but the convention wisely allows a certain latitude for aircraft over which strict control at or near the frontier is not required.²⁵

Even though customs administration as applied to aircraft be placed upon a uniform and internationally coöperative basis, opportunity for smuggling and fraud will be greatly enhanced by the introduction of this new means of transportation. Very many kinds of goods of high value but of light loading character are suitable for transportation over long distances by both airships and aëroplanes. In view of the fact that every field represents a port of embarkation and debarkation, and that delivery may be made with or without landing, by day or by night, customs control will be confronted with obstacles that seem almost insuperable. Even Tennyson foresaw "Pilots of the purple twilight, dropping down with costly bales." The expense of maintaining a customs-police adequate to meet the need may prove to be greater than any revenue return which might reasonably be expected. If this be true, the whole tariff system will be seriously affected in respect of many classifications.

ARBITRATION AND ADHERENCES

Any disagreement relating to the interpretation of the convention is to be referred to the Permanent Court of International Justice to be established by the League of Nations and, until its establishment, to arbitration. But the International Commission for Air Navigation is competent to determine, by a majority of votes, a dispute upon any of the technical regulations.²⁶

A neutral Power may adhere to the convention by simple declara-

²⁵ Convention, Annex H.

²⁶ *Ibid.*, Art. 38.

tion. An enemy state may adhere to it upon becoming a member of the League of Nations. Otherwise a unanimous vote of the contracting states is necessary, or, after January 1, 1923, a three-fourths vote. The convention may be denounced upon one year's notice after January 1, 1922, but denunciation takes effect only as to the state giving the notice.²⁷

Under the Peace Treaty with Germany, aircraft of the Allied and Associated Powers have full liberty of passage over and of landing upon German territory, without reciprocal rights. Germany agrees to enforce the necessary measures so that the rules of the present convention for the control of traffic shall govern both local and foreign aircraft in Germany, until Germany is permitted to adhere to the present convention.²⁸

CONCLUSION

The convention represents in the main an admirable basis for the regulation of air navigation between nations. It bears evidence of having been principally the work of experts learned in the mechanisms and operation of aircraft. Many of its provisions deal exclusively with the practical problems of the art of aërial navigation. In so far as the convention deals with legal questions, it follows a principle of control over the airspace which preserves every demand of national sovereignty and at the same time encourages the development of navigation. Where the convention deals with the private relations of and criminal jurisdiction over persons traveling in aircraft, the jurists of Continental Europe seem to have carried the day with the application of the *lex patriæ*. Some compromise should have been effected between the Continental and the Anglo-American systems, or else the subject should have been omitted. It is not of first importance. The number of practical issues likely to arise will not be very great for some time to come, but the enforcement of these provisions within the United States might nevertheless become a source of embarrassment to the Federal Government.

Congress is confronted with the task of providing an adequate system of legislation for the regulation of aërial navigation. In order to be adequate, the system must be national in scope, just as the air-medium itself is national or international rather than local. The distance traversable in one flight and the speed at which aircraft travel,

²⁷ Convention, Arts. 43-45.

²⁸ Treaty of Versailles, Arts. 315-320.

taken together with the fact that uniform regulation is essential to safety, all combine as elements in favor of national regulation, although such regulation may rely upon local administration. The adoption of methods at first employed in the control of railroads or in legislation for the automobile would result in like confusion and would tend to discourage the development of aviation. Congress has full power to establish a uniform scheme for the nation.²⁹ Curiously enough, international regulation has been elaborated in advance of national or local legislation both here and abroad. The first British statute was a mere fragment though known under the formidable title: "The Aërial Navigation Act, 1911."³⁰ Detailed regulation has recently been made effective by the promulgation of the "Air Navigation Regulations"³¹ which are to be coördinated with the present convention and the powers of the International Commission. Much of the present convention, especially the technical parts contained in the voluminous annexes, constitute material adaptable to national requirements. Just as the international rules of marine navigation apply also within territorial waters, so it is intended that air navigation shall likewise be regulated by laws common to the whole world.

²⁹ *United States v. Rio Grande D. & I. Co.* (1899), 174 U. S. 690; *Lake Shore & M. S. Ry. Co. v. Ohio* (1899), 173 U. S. 285; *Louisville & N. R. R. v. Eubank* (1902), 184 U. S. 27; *Houston & E. & W. T. R. R. v. United States* (1914), 234 U. S. 342.

³⁰ *Public Statutes*, 1 & 2 Geo. V, chap. 4.

³¹ *London Gazette*, April 30, 1919; reprinted in *Flying*, July, 1919, p. 525.

EDITORIAL COMMENT

POSTPONEMENT OF THE ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

At the meeting of the Executive Council of the American Society of International Law held in Washington on the 24th day of January, 1920, after very full discussion, the Council unanimously resolved that in view of the existing diplomatic situation, it was expedient to postpone the general meeting of the Society for the year 1920, until a time when general discussion of international questions that are of active public interest may be useful rather than embarrassing.

Timely notice of the postponed meeting will be given.¹

ELIHU ROOT,
President.

CHANGES IN THE JOURNAL

The expiration on December 31st last of the contract for the publication of the AMERICAN JOURNAL OF INTERNATIONAL LAW during the period of abnormally high prices, especially in the costs of printing and publication, placed the Society in a dilemma as to the proper course to pursue in order to bring its expenses within its income. The situation was thoroughly considered at a meeting of the Executive Committee held in Washington on January 24th last. It was thought inadvisable to make any increase in the annual dues of members or the subscription price to non-members, and alternative means of reducing the expenses of publication so as to enable the JOURNAL to be published at the present price were considered. After careful consideration, the following changes were found to be necessary in order to bring about the desired result: (1) to reduce the maximum number of pages per year in the JOURNAL and SUPPLEMENT from 1,200 to 1,000; (2) to discontinue the issuance of the SUPPLEMENT as a separate publication, but bind it under the same cover with the JOURNAL, retaining, however, its separate pagination so that it may

¹In case the meeting is not held this year, the subscription fees paid by members for the Proceedings of this year's annual meeting will, unless otherwise requested, be retained and credited on the respective member's accounts in payment for the Proceedings of next year.—CHANDLER P. ANDERSON, *Treasurer.*

be permanently bound in a separate volume at the end of the year (for the latter purpose the JOURNAL will continue to be separately indexed); (3) to grant the publishers the privilege of advertising their own publications upon the covers of the JOURNAL, the advertising to be limited to publications dealing with political science and to be approved by the Editor-in-Chief.

With these modifications, the Executive Committee is happily able to announce that it will not be necessary to increase the membership dues or the subscription price.

Owing to the issuance of the January and April numbers of the present year as a double number, it was possible to retain the JOURNAL and the SUPPLEMENT under separate covers, but beginning with the present number the SUPPLEMENT will be bound in the same cover with the JOURNAL, retaining its separate pagination, as above stated.

Up to the present time, the Society has utilized its small annual surplus for the publication and gratuitous distribution to its members of the printed volume of Annual Proceedings. Under the new printing arrangements, however, the Society will be unable to print and distribute the Proceedings free of charge. Upon this point the Executive Committee at its meeting on January 24th adopted the following resolution:

Resolved, That, owing to the greatly increased cost of publication, the free distribution of the Proceedings be hereafter discontinued and that a charge of one dollar and fifty cents per copy be made, the said charge to be entered separately on the due notices at the beginning of the year.

The intent of the above resolution is clear, namely, that those members who desire to receive the printed Annual Proceedings should subscribe to them separately at the rate of \$1.50; but there is no obligation to subscribe.

It was with much regret that the Executive Committee felt compelled to make any change at all in the publication of the JOURNAL after so many years of continued issuance without change, but the Committee felt that the acceptance of these slight modifications was preferable to an increase in the price. The modifications are regarded only as temporary, and the JOURNAL will revert to its old form as soon as publication costs return to anything approaching the old basis.

JAMES BROWN SCOTT,

Recording Secretary and Editor-in-Chief.

UNITED STATES CONGRESSIONAL PEACE RESOLUTION

The leading authorities on international law agree that peace can be reestablished between belligerents in other ways than by a treaty of peace.

This question was under discussion in Congress in the recent debate on the peace resolution adopted in its final form by the Senate on May 15, 1920,¹ repealing the joint resolution of April 6, 1917,² declaring that a state of war exists between the United States and the Imperial German Government, and the joint resolution of December 7, 1917,³ declaring that a state of war exists between the United States and the Austro-Hungarian Government.

The views of the majority were concisely expressed in the following extract and citations quoted from the report of the Committee on Foreign Affairs of the House on this resolution:

The authorities on international law agree that there are three ways of terminating war between belligerent states: First, by a treaty of peace; second, by the conquest and subjugation of one of the belligerents by the other; third, by the mere cessation of hostilities so long continued that it is evident that there is no intention of resuming them.

War may be terminated in three different ways: Belligerents may (1) abstain from further acts of war and glide into peaceful relations without expressly making peace through a special treaty, or (2) belligerents may formally establish the condition of peace through a special treaty of peace, or (3) a belligerent may end the war through subjugation of his adversary. (Oppenheim, *International Law*, vol. 2, p. 322.) . . .

It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences. What period of suspension of war is necessary to justify the presumption of the restoration of peace has never yet been settled, and must in every case be determined with reference to collateral facts and circumstances. (Mr. Seward, Secretary of State, July 22, 1868, *Dip. Cor.*, 1868, Vol. 2, pp. 32 to 34, cited Moore's *International Law*, Vol. 7, p. 336.)

The opposition relied chiefly upon challenging the constitutional authority of Congress to make peace by resolution, arguing that inasmuch as the Constitution expressly conferred upon Congress the power

¹ Text printed, *infra*, p. 419.

² Printed in Supplement to the JOURNAL, Vol. 11 (July, 1917), p. 151.

³ *Ibid.*, Vol. 12 (January, 1918), p. 9.

to declare war and was silent on the subject of making peace, the latter power, by implication, was withheld from Congress. The majority view which prevailed was that having conferred upon Congress the exclusive power to declare war, the Constitution would likewise have conferred upon the treaty-making power the exclusive power to make peace, if that had been its intention, and that the silence of the Constitution on the subject of making peace unquestionably meant that it was not within the exclusive jurisdiction of Congress or of the treaty-making power, but could be dealt with by the Federal Government under its national war powers through either one of these agencies.

The President vetoed the resolution, but his objections to it were based on other grounds than those discussed above, and as the resolution was not passed over his veto, its political aspect has been eliminated, and it may be examined impartially from the point of view of international law.

By this resolution Congress not only repealed its earlier resolutions which formally established the existence of a state of war between the United States and the Governments of Germany and Austria-Hungary, but also declared that the state of war was at an end.

The material facts, which seem to have been chiefly relied on in support of the declarations of the resolution in relation to the war with Germany (the Austrian situation was ignored in the debate) were that actual hostilities had ceased for more than a year and a half; that Germany had been required to surrender most of its warships and military equipment under the terms of the armistice and was incapable of renewing hostilities, and in fact had capitulated; that the Imperial German Government, with which the United States had declared itself to be in a state of war, was no longer in existence, and Congress had never declared the United States to be in a state of war with the German people or the present German Government; that commercial intercourse between the two countries had already been resumed, and finally that Germany had formally and officially declared that so far as she was concerned the state of war with all the belligerent Powers had terminated because the Treaty of Versailles, which Germany had ratified and was bound by, expressly declared that upon its coming into force the state of war was terminated.

It would seem, therefore, that from the point of view of interna-

tional law, apart from any constitutional question, the legal grounds upon which Congress based its action in adopting this resolution might fairly be stated to be that, inasmuch as a status of peace had in fact already been resumed, a resolution of Congress recognizing and declaring the existence of this state of peace, and repealing the earlier resolutions declaring the existence of a state of war, was an appropriate and effective way and all that was necessary to complete officially and formally a state of peace on our part with Germany in conjunction reciprocally with the state of peace already declared on their part with us.

Another interesting declaration in the resolution from the point of view of international law is found in section 3, which provides—

That until by treaty or Act or joint resolution of Congress it shall be determined otherwise, the United States, although it has not ratified the treaty of Versailles, does not waive any of the rights, privileges, indemnities, reparations, or advantages to which it and its nationals have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof, or which under the treaty of Versailles have been stipulated for its benefit as one of the principal allied and associated powers and to which it is entitled.

This reservation addresses itself to the Allied Powers associated with the United States in the war, rather than to Germany, in view of the provisions of the Treaty of Versailles which relate to the pledging of all of the assets of Germany as security for the payment of Germany's obligations to the Allied and Associated Powers, and certain properties, such as ships and securities and gold deposits and colonies, which are specifically surrendered to the Principal Allied and Associated Powers, of which the United States is one.

The rights secured to the Allied and Associated Powers by the terms of the treaty were not made conditional, so far as each party in interest was concerned, upon its ratification of the treaty, but are recognized by the treaty as inuring to them on account of their participation in the war.

The legal position would seem to be that inasmuch as this treaty was made for the benefit of the belligerent Powers, the United States, as one of them, although not having ratified the treaty, and even though it may never ratify this treaty, is entitled to retain, if it so desires, the rights which inured to it as a member of the group to which Germany has surrendered and for whose benefit the treaty was made.

A declaration of peace by the United States with Germany, independently of the treaty and without reference to it, might have been regarded by the Powers associated with the United States in the war as a relinquishment of the rights which the treaty recognized that the United States was entitled to as one of the Principal Allied and Associated Powers in the war against Germany. It was doubtless for this reason that Congress included in the resolution this reservation showing that it was not intended to waive or relinquish these rights, so that the Allied Powers would not feel at liberty to dispose of the assets of Germany and arrange their commercial and financial relations with Germany without regard to the rights of the United States.

CHANDLER P. ANDERSON.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The immediate task of the Peace Conference at Paris having been to terminate a general war upon terms dictated by the victorious Powers and to impose upon the vanquished necessary penalties as the consequence of their aggressions, the occasion was not well adapted for the organization of permanent institutions for the preservation of the future peace of the world. The reasons for this are obvious. Peace having been imposed upon the Central Powers by military force, a military organization was necessary for its execution. The Covenant of the League of Nations was designed to fulfill this purpose, and was therefore framed in the spirit of a military alliance between its members and was at least temporarily directed against a vanquished enemy. Founded thus upon the idea of force, the terms of the Covenant prescribed the conditions upon which force would, if necessary, be applied. It was primarily a military compact.

That the peace of nations, to be secure, must rest upon some deeper foundation than military power was evident even to those who proposed this compact. Provisions were, in consequence, introduced into the Covenant for the voluntary arbitration of international disputes and for conciliatory influence on the part of the Council. Farther than this it did not seem to the Supreme Council of the Allied Powers expedient at the time to go. When the Covenant was presented for ratification in the United States, it was justly urged that there was

in it no provision for a judicial settlement of differences through which a nation might assert its legal rights in lieu of war, and that there was in the Covenant no declaration of the existence of any rights which could be successfully vindicated against an aggressor by any other means than war.

This failure to make provision for determining judicially any one's rights left the Covenant open to the objection that it not only made no advance upon the status created by the Hague Conventions, but by ignoring the results of these efforts to establish international justice and the two hundred treaties of arbitration which they inspired, in effect virtually repudiated all the progress toward a judicial remedy for the violation of rights which had been attained during the last quarter of a century.

The explanation of this is evident. Had the Conference at Paris been a judicial rather than a political undertaking, it would have begun with a recital of the offenses committed by the Central Powers in violating the Hague Conventions and would have taken up the further development of the movement that led to the adoption of those agreements. It would then have become evident that the Second Conference at The Hague had carried that movement forward to a point where nothing was needed for its success but a disposition on the part of the Powers to regard themselves as responsible for defending and enforcing their own agreements.

The weakness and temporary failure of the movement resulting in the Hague Conventions were not owing to any defects in those compacts as efforts of jurisprudence, but to the lack of the political courage on the part of the signatories to assert the rights and assume the obligations which they implied.

At Paris political questions were of necessity in the foreground. The jurists were overshadowed by the political protagonists who occupied the center of the stage. There were present neither the forces, nor the motives, nor the atmosphere for establishing an institution of justice.

Looking at the situation dispassionately and in a purely historic spirit, it is incontrovertible that political adjustments and not the creation of any institution of justice were the main purpose of the Conference. From the nature of the circumstances jurisprudence could not be the controlling influence in its procedure. The utmost that could be conceded to it was that it might eventually have its day.

Accordingly, in Article XIV of the Covenant it was provided that

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Not to have made this provision would have subjected the Conference to just condemnation as wholly reactionary, rather than merely improgressive in the cause of international justice. The Second Hague Conference had actually elaborated a plan for such a court, and the majority of the nations had approved it. Even those Powers that secretly were opposed to it professed to favor it, and confined their obstruction to inspiring and emphasizing the difficulties raised ostensibly by the small states regarding the selection of judges. Even in 1907 no nation was inclined publicly to oppose the project of a permanent court of international justice.

The proposal embodied in Article XIV of the Covenant is clearly less committed to the conception of imperative justice than the Hague Conference of 1907. In that conference it was, in effect, conceded that an international court should have jurisdiction over all "justiciable" cases, a previous agreement being made as to what disputes should be recognized as having this character. Article XIV, on the contrary, attempts no discrimination between justiciable and non-justiciable differences, limiting the jurisdiction of the court to "any dispute of an international character which the parties thereto may submit to it"; although "the court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

There is, then, no provision in the Covenant of the League of Nations, even prospectively, by which a weak nation can find a judicial remedy for an injury inflicted by a strong nation, unless the alleged aggressor consents to an adjudication.

It is perhaps expecting too much to imagine that a group of victorious Great Powers, preoccupied with the conclusion of a successful struggle with a powerful adversary, would be mentally or morally adjusted to the refinements of jurisprudence. The time and the circumstances in which the Covenant was conceived did not permit of that.

It would be equally untimely at present to start a discussion regarding all the difficult and delicate problems connected with the nature and jurisdiction of a permanent court of international justice. It will rejoice every jurist who is a friend of peace that the necessity of such a court was recognized even in the midst of political anxieties, and that the Council of the League of Nations, in fulfilment of that promise, has already assembled a competent body of jurists to consider dispassionately the problem of creating a real court of international justice as distinguished from a tribunal of compromise.

At the time of this writing the commission designated by the Council to perform this important task is already in session. A most noteworthy observation is that it is in no sense a political body. Its members, all of them persons familiar with international law as a science, and in most cases of international reputation, have been chosen because of their eminent attainments and large experience as jurists, and are not to be specially identified with merely national interests. The auspices for a successful result of their labors could not be more promising.

Perhaps the most promising of them all is the selection by the Council of the Honorable Elihu Root to represent American jurisprudence in the commission. Other members of it are understood to have been named by their own governments as their most capable representatives. Mr. Root represents no government, but jurisprudence pure and simple, having been invited to sit on the Commission solely because of his knowledge, experience, and intellectual eminence as a jurist. His presence there is the highest honor that could be bestowed on him or on his country. He will propose nothing, and he will accept nothing, that is not internationally just and at the same time compatible with the institutions and the honor of the United States.

It is in this combination of qualifications that the significance of the selection of Mr. Root lies. He has not hesitated to criticise severely the juridical deficiencies of the Covenant of the League of Nations. On the other hand, he has insisted upon reservations on the part of the United States if this country is to become a member of the League of Nations. In view of these two attitudes of Mr. Root, the invitation extended to him to participate in the formation of the plan for a court to be submitted to the League is pregnant with meaning. On the one hand it is the highest possible compliment to his integrity

and his intelligence, and on the other it reveals a disposition to accept such a transformation of the original form and purpose of the League as may in time wholly alter its character, bringing its juridical function into the foreground, and thus providing a means for gradually extruding its military qualities.

It is impossible at this point to pass over in silence the position taken by Mr. Root on the improvement of international law and reliance upon it, supported by the public opinion of the civilized world, rather than upon military force, as an influence for peace.

After the first draft of the Covenant of the League of Nations was published in the United States, Mr. Root proposed an amendment, which was endorsed by a committee of eminent members of the American Bar and by the Executive Council of the American Society of International Law, reading:

The Executive Council shall call a general conference of the Powers to meet not less than two years or more than five years after the signing of this convention for the purpose of reviewing the condition of international law, and of agreeing upon and stating in authoritative form the principles and rules thereof.

Thereafter regular conferences for that purpose shall be called and held at stated times.

This proposed amendment was sent to Paris through the Department of State, but no action was taken upon it by the Conference.

The perfect reasonableness of this proposal renders it difficult to understand why, if it was ever laid before the committee on revision, no notice was taken of it. The adoption of the amendment would have gone far to show that the conception of the Covenant was not chiefly military, but in part at least juristic. It raised the question, still unanswered, whether the effect of the League would be to suppress purely legal methods and to base its action on arbitrary decisions.

The subject of the future of international law is closely connected with the establishment of a permanent court; for the court, if it is to be a court of justice, must be guided by the law, while at the same time its decisions will tend to constitute the law.

It would be untimely here to open a controversy over the question whether international law is likely to be most improved by fresh conferences and further codification on the one hand, or by a sequence of judicial decisions on the other. But, without raising this question, it is evident that the aversion to judicial decisions in international disputes is based quite as much on the inadequacy, the ambiguity, or

the positive imperfections of the law as upon the incompetency or prejudice of judges. A clarification of international law, from whatever source it may come, would go far, in the first instance, to secure obedience to its provisions, and in the second place to create confidence in the justice of the decisions of an international tribunal.

Indisputably, however, the first step to take is to establish a permanent court the end of which shall be justice and not mere temporary expediency. A determination of what class of cases can be brought before it will be, perhaps, the next step; but its final triumph must await the further development of the law.

When the nations have the wisdom and the courage to stand by the law and realize their obligation not only to obey but to support its enforcement, it will become more clearly apparent that the world's peace does not rest upon a combination of military forces pledged to protect territorial possessions and pretensions, but upon the opportunity to vindicate a right and redress a wrong by an appeal to a tribunal whose aim and whose glory consist in the fearless pursuit of justice under accepted law.

DAVID JAYNE HILL.

THE RIGHTS OF MINORITIES UNDER THE TREATY WITH POLAND

It has been neither difficult nor unpopular to pick flaws in the settlements which have been negotiated to wind up the World War. Nevertheless, the great mass of such treaty provisions have been in accord with the conscience and the sense of justice of the Allied and Associated Powers, rather than with their mere material interests. Relatively the flaws are trifling.

Amongst the provisions necessary to a stable and enduring future for the newly formed states, is the just treatment of those minorities which by reason of race or religion might suffer discrimination. We recall the repeated efforts of Prussia to stamp out language and spirit of nationality in her Polish subjects, and still more those of Russia. Are the tables now to be turned? The treaty which creates Poland is a sample of the working of the new spirit. For as Clémenceau declares in his letter on the subject of the treaty to M. Paderewski, referring to Article 93 of the German treaty, "This clause relates only to Poland, but a similar clause applies the same principles to

Czecho-Slovakia, and other clauses have been inserted in the Treaty of Peace with Austria and will be inserted in those with Hungary and with Bulgaria, under which similar obligations will be undertaken by other states which under those treaties receive large accessions of territory." This was to warn Poland and to reassure the beaten states which were now to lose portions of their soil by incorporation in new political units.

I have spoken of the new spirit, but the new conscience is a better word. Let us hope that it will endure.

Article 93 to which M. Clémenceau refers, in the Treaty of Peace with Germany negotiated at Versailles, is as follows:

Poland accepts and agrees to embody in a treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of Poland who differ from the majority of the population in race, language or religion.

Poland further accepts and agrees to embody in a treaty with the said Powers such provisions as they may deem necessary to protect freedom of transit and equitable treatment of the commerce of other nations.

How has this pledge been fulfilled, and how are the minority rights guaranteed! The answer must be largely in the Treaty language.¹

Article 8 declares that those German, Austrian, Hungarian or Russian nationals who before the war were resident in the partitioned Poland, are now to become nationals of the new created Poland, subject to special arrangements which may be contained in the treaties with Austria and Germany. But, nevertheless, they may opt (dreadful word) unhindered some other nationality. If so, they must change residence to this preferred state within a twelvemonth. And property

¹ Treaty of Peace between the United States of America, the British Empire, France, Italy and Japan and Poland. Signed June 28, 1919. Supplement to this JOURNAL, October, 1919, p. 423.

Art. 1. Poland undertakes that the stipulations contained in Articles 2 to 8 of this chapter shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Art. 2. Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

rights under such option are equitably laid down, also the status of minors.

This provision is less liberal than the usual one, as found, for instance, in our treaty with Spain of 1898, Article IX of which permits Spanish subjects to continue residence in ceded territory upon declaration of a desire to retain the old allegiance.

Art. 7. All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honors, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts.

Art. 8. Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Articles 9 and 10 relate to education in the public schools. Though teaching the Polish language may be made obligatory, yet in the primary schools instruction of the children of minorities of another tongue must be provided also. And such minorities shall have their fair share of the public funds for educational, religious or charitable purposes. Jewish schools shall be no exception to this rule. Nor may Jews be compelled to violate their Sabbath under penalty of legal disability, though this shall not exempt them from military or other obligations to the state.

Such are the specified rights of minorities in the new Poland. How now are these rights to be guaranteed? The answer is found in Clémenceau's letter of transmission, accompanying the Polish Treaty.

It is indeed true that the new treaty differs in form from earlier conventions dealing with similar matters. The change of form is a necessary consequence and an essential part of the new system of international relations which is now being built up by the establishment of the League of Nations. Under the older

system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was in practice ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the states affected which could be used for political purposes. Under the new system the guarantee is entrusted to the League of Nations. The clauses dealing with this guarantee have been carefully drafted so as to make it clear that Poland will not be in any way under the tutelage of those Powers who are signatories to the treaty.

M. Clémenceau's reference is to Article 12 of the Treaty with Poland. This will illustrate how the Covenant of the League is interwoven with all the treaties. It is necessary to quote Article 12 in full.

Poland agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Poland agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Poland further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

Under the old system, discredited because ineffective, treaty stipulations looked for enforcement to the military power of the guarantors. The new order, without military power because it presupposes that a large reduction of armament has taken place and that conscription is a thing of the past, has to rely upon judicial determination at the hands of the League Court, to be executed in last resort by boycott or the force of all against one.

Note also the preferred position of the Council Members. If one of them is party to a dispute with Poland, then the machinery of the League is set in motion. But if not, if for instance, the dispute were between Poland and Germany, then the remedy depends upon whether a Council Member takes up Germany's cause.

It is truly a complete change in the organization of the Society of Nations. To visualize it requires imagination and hopefulness. But the alternative is despair.

THEODORE S. WOOLSEY.

THE MANDATE OVER ARMENIA

President Wilson, on May 24th, appealed to Congress to authorize the United States to undertake a mandate over Armenia in response to the request of the Supreme Council at its meeting in San Remo. The President indicated at the same time that he had agreed to delimit the boundaries of Armenia within the Turkish Vilayets of Van, Bitlis, Trebizond, and Erzerum. It should be observed that both requests emanated from the Supreme Council and not from the League of Nations under whose control all mandates are to be placed.

On May 29th, after a brief and somewhat partisan debate, the United States Senate passed the following concurrent resolution declining to accede to President Wilson's appeal:

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia as requested in the message of the President dated May 24, 1920.

No formal reasons were adduced for this action, though the debate brought out certain fundamental objections. These objections were based for the most part on the special report submitted by Major-General James G. Harbord, head of the American Military Mission to Armenia appointed by President Wilson.

While not making any specific recommendations, this report stressed certain difficulties in the way of undertaking a mandate over Armenia. The military problem of preserving internal order and guarding against external aggression from troublesome neighbors was presented as being grave in character. The political complications bound to result from interjecting the United States into the mael-

strom of the Eastern Question for a generation or more were pointed out. And the financial burden of a mandate was estimated at the high figure of over seven hundred and fifty-six million dollars for the first five years.

These objections seemed to weigh heavily in the minds of the Senators opposed to the mandate, though, as a matter of fact, General Harbord's observations applied not to this specific proposal for a mandate over a lesser Armenia, but to the idea of one large mandate involving the whole of Anatolia, Constantinople and European Turkey, as well as Transcaucasian Armenia.

Ignoring undoubted considerations of a partisan nature, it would seem evident that the hostility of Congress toward this mandate is based in part on a genuine distrust of the League of Nations and of all the responsibilities implied in its membership as illustrated by this proposal that the United States should administer Armenia.

The practical problem presented by this momentous proposal is unquestionably whether the United States should be made an active party to the Eastern Question. That the Eastern Question is very much alive is evidenced by the open rivalries of the European Powers for a favored position in the Near East. Under the guise of "mandates," Great Britain, France, Italy and Greece are seeking valuable additions of territory.

The attitude of Great Britain calls for especial comment. In addition to Palestine and Mesopotamia, not to include spheres of influence in Arabia and Persia, Great Britain has actually occupied Constantinople, with the nominal though reluctant coöperation of her allies, and has apparently settled down by the Bosphorus for an indefinite stay.

Historical candor requires that attention should be drawn to the fact that by the Treaty of Berlin in 1880, Great Britain assumed the rôle of protector of the Armenians and took over the Island of Cyprus as a gage for the introduction of reforms in Armenia by the Porte. Sultan Abdul Hamid was not slow to realize that the Armenians were in error in believing that they could count on valiant support in their aspirations for social and political amelioration. Previous to 1880, bad as was the lot of all the misgoverned subjects of the Ottoman Empire, the Armenians had existed in relative quiet without grave molestation from the Turks. The embitterment of relations between the two races, and the terrible massacres which

occurred in 1895 and 1896, and which were the precursors of the general policy of extermination adopted later by the Young Turks, must be attributed in the main to the intrusive and fruitless friendship of Great Britain for the Armenians. When one contemplates the enormous sacrifices made by Great Britain in the Great War, he is tempted to excuse her unwillingness to assume the burden of administering Armenia. But against this must be set the fact that Great Britain seems quite willing to assume new burdens in Palestine, Mesopotamia, Constantinople, Persia, and elsewhere where material advantages are promising.

The chief concern of the European Powers is, apparently, not for the welfare of the oppressed nationalities of the Near East, but the attainment of selfish materialistic ends. And having reached a fairly satisfactory division of territory, they now appeal to the United States to accept the thorniest and the most undesirable task of caring for the grossly neglected and unloved Armenians.

These unpleasant facts should be borne in mind when Americans are accused of selfish indifference toward the Armenians. One must ask in all fairness why public opinion in Great Britain has not been aroused to a keener sense of the obligations of honor to care for these most unfortunate people.

Under all these circumstances it is not at all strange that the American people should be most reluctant to become acutely embroiled in the Eastern Question by accepting so onerous a burden as the mandate over Armenia. And yet the hearts of the American people have been deeply touched by the tragic lot of these unhappy people, who even now—a miserable remnant—are unprotected from utter annihilation at the hands of the Turks, the Kurds, and their Tartar neighbors in Azerbaijan. Very large contributions have been made for purposes of relief in the Near East, and many heroic Americans in various capacities are devoting themselves under trying and dangerous conditions to the task of bringing immediate help and hope to these despairing people.

This sympathy for the Armenians was expressed in the Senate debate by Senator Hitchcock in an alternative proposal to the effect that the Armenian Republic should be aided and encouraged in its efforts to raise funds and obtain valued moral support of various kinds. This proposition is not without considerable merit, though it received slight consideration at the hands of the Senate. The moral

support of the American Government and of the whole American people might result in the enlistment of a large number of men and women of tested leadership, and of high devotion and courage to go to Armenia and undertake the colossal, though inspiring, task of helping to bring order out of chaos, and hope out of black despair.

The larger problem of the obligations of the whole family of nations toward peoples and nations in a backward stage of development is vividly epitomized by the question of a mandate for Armenia. The United States has been compelled to acknowledge the existence of such practical problems in the cases of Haiti and Santo Domingo, where American officials and soldiers are playing the high rôle so aptly described by President Wilson as that of "big brother." There are many such situations the world over, and suffering Armenia is surely the most poignant. It may be asserted with considerable force that the United States has its own vast obligations on this Continent, not to speak of its duty toward the Filipinos, and that we cannot play the part of "constable to all creation." It may fairly be said that if Europe is callously indifferent to the needs and the rights of the Armenians, there is no obligation on us to undertake Europe's own peculiar task.

The fact remains, however, that after the close of a terrible war which we hoped might establish the rights of all nations and lay the secure foundations of international law, the world seems to stand indifferent to the rights of an ancient race still in bondage.

Whatever justification there may be for this refusal to undertake a mandate over Armenia, it is doubtful whether the American people can remain passive and permit this nation to be completely extirpated while the rest of the world, in cynical devotion to selfish aims, fails to take the necessary steps to avert so unspeakable a catastrophe. International good citizenship would seem to require that the United States should assert its moral leadership in behalf of the fundamental rights of nations.

PHILIP MARSHALL BROWN.

THE EXTENSION OF CONGRESSIONAL JURISDICTION BY THE
TREATY-MAKING POWER

By the recent decision of the Supreme Court of the United States in the case of *Missouri v. Holland*, that court, in an opinion delivered by Mr. Justice Holmes, definitely and conclusively decided in the affirmative the much debated question of whether or not a distinction should be drawn between the jurisdiction of the treaty-making power and the jurisdiction of Congress in relation to the so-called reserved powers under the Constitution.

This question was discussed in an article published in an early number of this JOURNAL¹ wherein it was pointed out that the treaty-making power itself was one of the powers delegated to the Federal Government and therefore was not affected by the Tenth Amendment to the Constitution reserving to the States or to the people the powers not delegated to the United States by the Constitution. Furthermore, it was contended that it was well settled not only by the sanction of custom, but also by the authority of decisions of the Supreme Court, that in the international relations of the nation, the treaty-making power had jurisdiction over matters beyond the ordinary jurisdiction of Congress, and therefore that it must embrace some at least of the powers which, if measured by the jurisdiction of Congress, would be reserved to the states or to the people.

After examining these authorities, the conclusion was reached that the treaty-making power is a *national* rather than a *federal* power, and that this distinction measures the whole difference between its jurisdiction and the jurisdiction of Congress in relation to the so-called reserved powers.

It was also pointed out in that article that in cases in which the treaty-making power dealt with matters beyond the ordinary jurisdiction of Congress, that jurisdiction was thereby enlarged to meet the requirements of the situation, pursuant to the authority conferred upon Congress by the provisions of Article 1, Section 8, of the Constitution, which empowered Congress to "make all laws which might be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any Department or officer thereof."

¹ "Extent and Limitations of the Treaty-Making Power," by Chandler P. Anderson, this JOURNAL, July, 1907. Vol. I, page 636.

The views and conclusions expressed in that article were challenged by several writers of authority, who dealt with the subject from the States' rights point of view, but the question can hardly be regarded any longer as open for discussion in view of this recent decision² of the Supreme Court, from which the following extracts are taken:

This is a bill in equity brought by the State of Missouri to prevent a game warden of the United States from attempting to enforce the Migratory Bird Treaty Act of July 3, 1918, c. 128, 40 Stat. 755, and the regulations made by the Secretary of Agriculture in pursuance of the same. The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the Tenth Amendment, and that the acts of the defendant done and threatened under that authority invade the sovereign right of the State and contravene its will manifested in statutes. . . .

On December 8, 1916, a treaty³ between the United States and Great Britain was proclaimed by the President. It recited that many species of birds in their annual migrations traversed many parts of the United States and of Canada, that they were of great value as a source of food and in destroying insects injurious to vegetation, but were in danger of extermination through lack of adequate protection. It therefore provided for specified close seasons and protection in other forms, and agreed that the two powers would take or propose to their law-making bodies the necessary measures for carrying the treaty out. 39 Stat. 1702. The above-mentioned Act of July 3, 1918, entitled an act to give effect to the convention, prohibited the killing, capturing or selling any of the migratory birds included in the terms of the treaty except as permitted by regulations compatible with those terms, to be made by the Secretary of Agriculture. Regulations were proclaimed on July 31, and October 25, 1918. 40 Stat. 1812; 1863. It is unnecessary to go into any details because, as we have said, the question raised is the general one whether the treaty and statute are void as an interference with the rights reserved to the States.

The opinion points out that to answer this question it is not enough to refer to the Tenth Amendment reserving the powers not delegated to the United States, because by Article 2, Section 2, the power to make treaties is delegated expressly, and by Article 6 treaties made under the authority of the United States, along with the Constitution and laws of the United States made in pursuance thereof, are declared the supreme law of the land. The opinion continues as follows:

If the treaty is valid there can be no dispute about the validity of the statute under Article I, Section 8, as a necessary and proper means to execute the powers of the Government. . . .

It is said that a treaty cannot be valid if it infringes the Constitution, that

² Printed *infra*, p. 459.

³ Printed in Supplement to this JOURNAL. Vol. 11, 1917, page 62.

there are limits, therefore, to the treaty-making power, and that one such limit is that what an act of Congress could not do unaided, in derogation of the powers reserved to the States, a treaty cannot do. An earlier act of Congress that attempted by itself and not in pursuance of a treaty to regulate the killing of migratory birds within the States had been held bad in the District Court. *United States v. Shauver*, 214 Fed. Rep. 154. *United States v. McCullagh*, 221 Fed. Rep. 285. Those decisions were supported by arguments that migratory birds were owned by the States in their sovereign capacity for the benefit of their people, and that under cases like *Geer v. Connecticut*, 161 U. S. 19, this control was one that Congress had no power to displace. The same argument is supposed to apply now with equal force. . . .

Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, "a power which must belong to and somewhere reside in every civilized government" is not to be found. *Andrews v. Andrews*, 188 U. S. 14, 33. . . . The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment.

Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the State and has no permanent habitat therein. But for the treaty and the statute there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed. It is not sufficient to rely upon the States. The reliance is vain, and were it otherwise, the question is whether the United States is forbidden to act. We are of opinion that the treaty and statute must be upheld. *Cary v. South Dakota*, 250 U. S. 118.

The objection which suggests itself that a roundabout way is thus furnished by which Congress may be empowered to take jurisdiction generally over all the otherwise reserved powers seems to be met by the underlying condition, which applies to all such cases, that only those matters which directly concern the international interests of the nation and promote its general welfare can be brought within the jurisdiction of Congress in this way by treaties.

CHANDLER P. ANDERSON.

IN MEMORIAM—ROBERT BACON

On the twenty-ninth day of May, 1919, Robert Bacon, a life member of the American Society of International Law, and at one time Assistant, and Secretary of State, Ambassador to France, Major, Lieutenant-Colonel, and Colonel in the American Expeditionary forces in France, died, in the fifty-eighth year of his age, in a hospital in the City of New York.

The thing at hand he did, and did well, in college, in business, in civil life and in the military service of his country.

As undergraduate of Harvard, in the class of his life-long friend Theodore Roosevelt, he was a good student and easily first in athletics.

In business he became the partner and confidant of the late John Pierpont Morgan.

Appointed Assistant Secretary of State by Secretary Root, that great statesman and competent judge of men said of him and to him:

You have proved yourself far more able and forceful than I dared to hope—possessed of courage to take responsibility and conduct great affairs without flinching or the loss of judgment or nerve—competent to fill any post of government with distinction and success. More than that, you have had the imagination to realize the ultimate objects of policy, and tireless energy and enthusiasm and self-devotion in pressing towards those objects, and your brave-hearted cheerfulness and power of friendship and steadfast loyalty have been noble and beautiful.

I am sure you have a still more distinguished career before you for all who love you to rejoice in.

I count the day when you were surprised by the offer of the post of Assistant Secretary of State one of the most fortunate of my life.

Of him as Secretary of State, the late British Ambassador to the United States, James Bryce, has written:

How often have I recalled the work we did together for furthering friendship and good relations between America and England, and how pleasant it was to deal with him. Such was the candor of his mind and the earnestness of his wish to settle everything in a way fair and just all round,—the right temper in which a Secretary of State in any country should approach his tasks.

Years after the end of his embassy to France, Saint-Dié, whose scholars gave the name of America to the New World, voted to give the name of America to one of its streets, in commemoration of the Four Hundredth Anniversary of that great event and in further com-

memoration of the entry of the United States into the war; and the committee in charge recalled and reproduced the following passages from Mr. Bacon's address, delivered in French at the Anniversary:

Après que la Lorraine française se fût penchée sur notre berceau pour nous donner un nom, ce fut la plus grande France qui jeta dans la balance son épée pour nous donner une indépendance. Ma présence au milieu de vous, vous prouve que l'Amérique n'oublie pas et conserve à jamais une place à part dans son affection à la jolie cité vosgienne de Sainte-Dié, à la belle France. . . .

Cette vieille et si pittoresque ville de Saint-Dié, où je reçois aujourd'hui une si cordiale et si touchante hospitalité, n'est pas seulement le lieu où furent tenus les fonts baptismaux du Nouveau Monde, elle fut aussi un centre intellectuel remarquable, à une époque où ils n'étaient pas communs, et elle a sa part d'influence dans le grand mouvement d'expansion des lettres au début du XVI^e siècle.

Pour vous, Français, elle rappelle un passé héroïque et brillant dont témoignent tant d'autres villes dans votre beau pays dont la longue existence historique a été si féconde en événements mémorables; mais pour nous, Américains, elle évoque le souvenir d'un fait unique dans son genre et l'image de Saint-Dié, où l'Amérique reçut son nom, prend place dans nos coeurs à côté de celle de Versailles, où l'Amérique contracta avec la France une alliance indissoluble.

On May 1, 1918, General John J. Pershing, Commander-in-Chief of the American Expeditionary Forces, thus wrote of his services as Commandant of Chaumont:

I take this occasion to express to you my earnest appreciation of the whole-hearted way in which you have constantly performed every duty given you since our departure from New York last May. Your enthusiasm, your willingness and singleness of purpose are an example to all of us.

Of his services as Chief of the American Mission with the British and attached to the Staff of Field Marshal Sir Douglas Haig, Commander-in-Chief of the British Army in France, Sir Douglas said in his official dispatch to the British Government:

My thanks are due to Lieutenant-Colonel Robert Bacon, who as Chief of the American Mission attached to my Headquarters has been able to give me advice and assistance of the greatest value on many occasions.

And in a personal letter, Sir Douglas wrote:

We treated him quite as one of ourselves, and indeed I had no Military secrets to conceal from him. . . .

I shall never forget what Robert Bacon did to help me during the last year of the war.

And the Chief of Staff of the British Army in France, General Sir H. A. Lawrence, wrote:

I wish I could make clear the inestimable service which he rendered to the Allied cause by acting as head of the Mission attached to our Headquarters.

His high character and splendid enthusiasm inspired all with whom he came in contact while his great experience made him a guide to whom all of us instinctively turned. . . .

He has given his life to his country just as much as if he had actually fallen on the field of battle, and I can assure you that his memory will long be cherished by the British Army.

On January 26, 1919, he was thus cited by Marshal Pétain, in Special Orders to the French Army:

Officier supérieur de haute valeur professionnelle et morale.—A comme Ambassadeur des Etats Unis en France, puissamment contribué au resserrement des liens d'amitié unissant les deux nations.—Nommé Aide de Camp du Général Commandant en Chef les Forces Américaines au début de l'entrée en guerre des Etats Unis, s'est dépensé sans compter, et par son activité inlassable, et ses qualités d'organisateur a grandement contribué d'abord à la formation, puis au succès des Armées Américaines.

He was also cited and received the Distinguished Service Medal of the United States in the following terms:

For exceptionally meritorious and distinguished services. He served with great credit and distinction as Post Commandant of General Headquarters and as Aide-de-Camp to the Commander-in-Chief. By his untiring efforts as Chief of the American Mission at British General Headquarters, he has performed with marked ability innumerable duties requiring great tact and address.

Finally, the spirit in which he met and performed his duties, whether they concerned his country, the great or the lowly, and the impression left on all who came in contact with him, is evidenced by this little letter written by one Marguerite Gilly, under date of December 1, 1917, and addressed to him as "The Commandant, American Headquarters," at Chaumont:

Pardon me, sir, for the liberty I take in writing to you. Permit me, sir, to send you fifty francs in order to place a wreath on the grave of the little American Soldier who died far away from his country—coming to the aid of France. I did not myself dare to carry it there, else I should already have done so. Do not refuse, sir, the humble offering of a French woman who loves America above all things; who in memory of those dear dead, who have died for their country is proud and happy to offer a wreath to the American Soldier

who died far away from his mother, in order to come to the assistance of the children of France.

I shall always remember, sir, that you gave me permission to set up a little stand opposite the barracks—Thank you, sir. I beg you, sir, not to refuse to place a wreath for this little soldier. I believe it will bring happiness to my husband. I did not dare do it myself.

Thanking you, sir,—accept my sincere good wishes for America and for France.

Of a truth, the bravest are the tenderest.

JAMES BROWN SCOTT.

CURRENT NOTES

COMMENTARY ON THE LEAGUE OF NATIONS COVENANT

British Foreign Office publication, presented to Parliament by command of His Majesty, June, 1919.¹

The first draft of the Covenant of the League of Nations was published on February 14, 1919; in the weeks following its publication the League of Nations Commission had the benefit of an exchange of views with the representatives of thirteen neutral governments, and also of much criticism on both sides of the Atlantic. The covenant was subjected to careful reëxamination, and a large number of amendments were adopted. In its revised form it was unanimously accepted by the representatives of the Allied and Associated Powers in plenary conference at Paris on April 28, 1919.

The document that has emerged from these discussions is not the constitution of a super-state, but, as its title explains, a solemn agreement between sovereign states, which consent to limit their complete freedom of action on certain points for the greater good of themselves and the world at large. Recognizing that one generation cannot hope to bind its successors by written words, the commission has worked throughout on the assumption that the league must continue to depend on the free consent, in the last resort, of its component states; this assumption is evident in nearly every article of the covenant, of which the ultimate and most effective sanction must be the public opinion of the civilized world. If the nations of the future are in the main selfish, grasping and warlike, no instrument or machinery will restrain them. It is only possible to establish an organization which may make peaceful coöperation easy and hence customary, and to trust in the influence of custom to mould opinion.

But while acceptance of the political facts of the present has been one of the principles on which the commission has worked, it has sought to create a framework which should make possible and en-

¹ Miscellaneous, No. 3 (1919). [Cmd. 151.]

courage an indefinite development in accordance with the ideas of the future. If it has been chary of prescribing what the league shall do, it has been no less chary of prescribing what it shall not do. A number of amendments laying down the methods by which the league should work, or the action it should take in certain events, and tending to greater precision generally, have been deliberately rejected, not because the commission was not in sympathy with the proposals, but because it was thought better to leave the hands of the statesmen of the future as free as possible, and to allow the league, as a living organism, to discover its own best lines of development.

The Members of the League

Article I contains the conditions governing admission to the league, and withdrawal from it. On the understanding that the covenant is to form part of the Treaty of Peace, the article has been so worded as to enable the enemy Powers to agree to the constitution of the league, without at once becoming members of it. It is hoped that the original members of the league will consist of the thirty-two Allied and Associated Powers, signatories of the Treaty of Peace, and of thirteen neutral states.

It is to be noted that original members must join without reservation, and must therefore all accept the same obligations.

The last paragraph is an important affirmation of the principle of national sovereignty, while providing that no state shall be able to withdraw simply in order to escape the consequences of having violated its engagements. It is believed that the concession of the right of withdrawal will, in fact, remove all likelihood of a wish for it, by freeing states from any sense of constraint, and so tending to their more whole-hearted acceptance of membership.

The Organs of the League

Articles II-VII describe the constitutional organs of the league.

The Assembly, which will consist of the official representatives of all the members of the league, including the British Dominions and India, is the conference of states provided for in nearly all schemes of international organization, whether or not these also include a body of popular representatives. It is left to the several states to decide how their respective delegations shall be composed; the members need not all be spokesmen of their governments.

The Assembly is competent to discuss all matters concerning the league, and it is presumably through the Assembly that the assent of the governments of the world will be given to alterations and improvements in international law (see Article XIX), and to the many conventions that will be required for joint international action.

Its special functions include the selection of the four minor Powers to be temporarily represented on the Council, the approval of the appointment of the Secretary-General, and the admission (by a two-thirds majority) of new members.

Decisions of the Assembly, except in certain specified cases, must be unanimous. At the present stage of national feeling, sovereign states will not consent to be bound by legislation voted by a majority, even an overwhelming majority, of their fellows. But if their sovereignty is respected in theory, it is unlikely that they will permanently withstand a strong consensus of opinion, except in matters which they consider vital.

The Assembly is the supreme organ of the League of Nations, but a body of nearly 150 members, whose decisions require the unanimous consent of some 50 states, is plainly not a practical one for the ordinary purposes of international coöperation, and still less for dealing with emergencies. A much smaller body is required, and, if it is to exercise real authority, it must be one which represents the actual distribution of the organized political power of the world.

Such a body is found in the Council, the central organ of the league, and a political instrument endowed with greater authority than any the world has hitherto seen. In form its decisions are only recommendations, but when those who recommend include the political chiefs of all the great Powers and of four other Powers selected by the states of the world in assembly, their unanimous recommendations are likely to be irresistible.

The mere fact that these national leaders, in touch with the political situation in their respective countries, are to meet once a year, at least, in personal contact for an exchange of views, is a real advance of immense importance in international relations. Moreover, there is nothing in the covenant to prevent their places being taken, in the intervals between the regular meetings, by representatives permanently resident at the seat of the league, who would tend to create a common point of view, and could consult and act together in an emergency. The pressure of important matters requiring decision

is likely to make some such permanent body necessary, for the next few years at least.

The fact that for the decisions of the Council, as of the Assembly, unanimity is ordinarily required, is not likely to be a serious obstacle in practice. Granted the desire to agree, which the conception of the league demands, it is believed that agreement will be reached, or at least that the minority will acquiesce. There would be little practical advantage, and a good deal of danger, in allowing the majority of the Council to vote down one of the great Powers. An important exception to the rule of unanimity is made by the clause in Article XV providing that, in the case of disputes submitted to the Council, the consent of the parties is not required to make its recommendations valid.

The second paragraph of Article IV allows for the admission of Germany and Russia to the Council when they have established themselves as Great Powers that can be trusted to honor their obligations, and may also encourage small Powers to federate or otherwise group themselves for joint permanent representation on the Council. Provision is made for securing that such increase in the permanent membership of the Council shall not swamp the representatives of the small Powers, but no fixed proportion between the numbers of the Powers in each category is laid down.

The interests of the small Powers are further safeguarded by the fifth paragraph of Article IV. Seeing that decisions of the Council must be unanimous, the right to sit "as a member" gives the state concerned a right of veto in all matters specially interesting it, except in the settlement of disputes to which it is a party. The objection that this provision will paralyze the efforts of the Council does not seem valid, as it is most unlikely that the veto would be exercised except in extremely vital matters.

The relations between the Assembly and the Council are purposely left undefined, as it is held undesirable to limit the competence of either. Cases will arise when a meeting of the Assembly would be inconvenient, and the Council should not therefore be bound to wait on its approval. Apart from the probability that the representatives of states on the Council will also sit in the Assembly, a link between the two bodies is supplied by the Permanent Secretariat, or new international civil service.

This organization has immense possibilities of usefulness, and a very

wide field will be open for the energy and initiative of the first Secretary-General. One of the most important of his duties will be the collection, sifting, and distribution of information from all parts of the world. A reliable supply of facts and statistics will in itself be a powerful aid to peace. Nor can the value be exaggerated of the continuous collaboration of experts and officials in matters tending to emphasize the unity, rather than the diversity of national interests.

The Prevention of War

Articles VIII-XVII, forming the central and principal portion of the covenant, contain the provisions designed to secure international confidence and the avoidance of war, and the obligations which the members of the league accept to this end. They comprise:

- (1) Limitation of armaments.
- (2) A mutual guarantee of territory and independence.
- (3) An admission that any circumstance which threatens international peace is an international interest.
- (4) An agreement not to go to war till a peaceful settlement of a dispute has been tried.
- (5) Machinery for securing a peaceful settlement, with provision for publicity.
- (6) The sanctions to be employed to punish a breach of the agreement in (4).
- (7) Similar provisions for settling disputes where states not members of the league are concerned.

All these provisions are new, and together they mark an enormously important advance in international relations.

Article VIII makes plain that there is to be no dictation by the Council or anyone else as to the size of national forces. The Council is merely to formulate plans, which the governments are free to accept or reject. Once accepted, the members agree not to exceed them. The formulation and acceptance of such plans may be expected to take shape in a general Disarmament Convention, supplementary to the covenant.

The interchange of information stipulated for in the last paragraph of the article will, no doubt, be effected through the commission mentioned in Article IX. The suggestion that this commission might be given a general power of inspection and supervision, in

order to insure the observance of Article VIII, was rejected for several reasons. In the first place, such a power would not be tolerated by many national states at the present day, but would cause friction and hostility to the idea of the league; nor, in fact, is it in harmony with the assumption of mutual good faith on which the league is founded, seeing that the members agree to exchange full and frank information; nor, finally, would it really be of practical use. Preparations for war on a large scale cannot be concealed, while no inspection could hope to discover such really important secrets as new gases and explosives and other inventions of detail. The experience of our own Factory Acts shows what an army of officials is required to make inspection efficient, and how much may escape observation even then. In any case, the league would certainly receive no better information on such points of detail from a commission than that obtained through their ordinary intelligence services by the several states.

Nor can the commission fill the rôle of an International General Staff. The function of a general staff is preparation for war, and the latter requires the envisagement of a definite enemy. It would plainly be impossible for British officers to take part in concerting plans, however hypothetical, against their own country, with any semblance of reality; and all the members of a staff must work together with complete confidence. It is further evident that no state would communicate to the nationals of its potential enemies the information as to its own strategic plans necessary for a concerted scheme of defense. The most that can be done in this direction by the commission is to collect non-confidential information of military value, and possibly to work out certain transit questions of a special character.

In Article X the word "external" shows that the league cannot be used as a Holy Alliance to suppress national or other movements within the boundaries of the member states, but only to prevent forcible annexation from without.

It is important that this article should be read with Articles XI and XIX, which make it plain that the covenant is not intended to stamp the new territorial settlement as sacred and unalterable for all time, but, on the contrary, to provide machinery for the progressive regulation of international affairs in accordance with the needs of the future. The absence of such machinery, and the consequent survival of treaties long after they had become out of date, led to

many of the quarrels of the past; so that these articles may be said to inaugurate a new international order, which should eliminate, so far as possible, one of the principal causes of war.

Articles XII-XVI contain the machinery for the peaceful settlement of disputes, and the requisite obligations and sanctions, the whole hingeing on the cardinal agreement that a state which goes to war without submitting its ground of quarrel to arbitrators or to the Council, or without waiting till three months after award of the former or the recommendation of the latter, or which goes to war in defiance of such award or recommendation (if the latter is agreed to by all members of the Council not parties to the dispute), thereby commits an act of war against all the other members of the league, which will immediately break off all relations with it and resort, if necessary, to armed force.

The result is that private war is only contemplated as possible in cases when the Council fails to make a unanimous report, or when (the dispute having been referred to the Assembly) there is lacking the requisite agreement between all the members of the Council and a majority of the other states. In the event of a state failing to carry out the terms of an arbitral award, without actually resorting to war, it is left to the Council to consider what steps should be taken to give effect to the award; no such provision is made in the case of failure to carry out a unanimous recommendation by the Council, but it may be presumed that the latter would bring pressure of some kind to bear.

In this, as in other cases, not the least important part of the pressure will be supplied by the publicity stipulated for in the procedure of settlement. The obscure issues from which international quarrels arise will be dragged out into the light of day, and the creation of an informed public opinion made possible.

Article XIII, while not admitting the principle of compulsory arbitration in any class of disputes, to some extent recognizes the distinction evolved in recent years between justiciable and non-justiciable causes, by declaring that in certain large classes of disputes recourse to arbitration is *prima facie* desirable.

The Permanent Court of Justice, to be set up under Article XIV, is essential for any real progress in international law. As things now stand, the political rather than the judicial aspect of the settlement of disputes is prominent in the covenant, but "political" settle-

ments can never be entirely satisfactory or just. Ultimately, and in the long run, the only alternative to war is law, and for the enthronement of law there is required such a continuous development of international jurisprudence, at present in its infancy, as can only be supplied by the progressive judgments of a permanent court working out its own traditions. Isolated instances of arbitration, however successful, can never result to the same extent in establishing the reign of law.

Under Article XV a dispute referred to the Council can be dealt with by it in several ways:

- (1) The Council can keep the matter in its own hands, as it is certain to do with any essentially political question in which a powerful state feels itself closely interested.
- (2) It can submit any dispute of a legal nature for the opinion of the Permanent Court, though in this case the finding of the court will have no force till endorsed by the Council.
- (3) While keeping the matter in its own hands, the Council can refer single points for judicial opinion.
- (4) There is nothing to prevent the Council from referring any matter to a committee, or to prevent such a committee from being a standing body. An opening is left, therefore, for the reference of suitable issues to such non-political bodies as the "Commissions of Conciliation," which are desired in many quarters. The reports of such committees would, of course, require the approval of the Council to give them authority, but the covenant leaves wide room for development in this direction.
- (5) The Council may at any time refer a dispute to the Assembly. The procedure suggested under (2) (3) and (4) will then be open to the Assembly.

It has been already pointed out that, in the settlement of disputes under this article, the consent of the parties themselves is not necessary to give validity to the recommendations of the Council. This important provision removes any inconveniences that might arise in this connection from the right (see Article IV) of every Power to sit as member of the Council during the discussion of matters specially affecting it. We may expect that any Power claiming this right

in the case of a dispute will be given the option of declaring itself a party to the dispute or not. If it declares itself a party, it will lose its right of veto; if not, it will be taken to disinterest itself in the question, and will not be entitled to sit on the Council.

The sanctions of Article XVI, with the exception of the last paragraph, apply only to breaches of the covenant involving a resort to war. In the first instance, it is left to individual states to decide whether or not such a breach has occurred and an act of war against the league been thereby committed. To wait for the pronouncement of a court of justice or even of the Council would mean delay, and delay at this crisis might be fatal. Any state, therefore, is justified in such a case in breaking off relations with the offending state on its own initiative, but it is probable, in fact, that the smaller states, unless directly attacked, will wait to see what decision is taken by the great Powers or by the Council, which is bound to meet as soon as possible, and is certain to do so within a few hours. It is the duty of the Council, with the help of its military, naval and air advisers, to recommend what effective force each member of the league shall supply; for this purpose, each member from which a contribution is required has the right to attend the Council, with power to veto, during the consideration of its particular case. The several contingents will therefore be settled by agreement, as is indeed necessary if the spirit of the covenant is to be preserved, and if joint action is to be efficacious. But it is desirable at this point to meet the objection that under such conditions the league will always be late, and consequently offers no safeguard against sudden aggression.

It is true that, in default of a strong international striking force, ready for instant action in all parts of the world, the members of the league must make their own arrangements for immediate self-defense against any force that could be suddenly concentrated against them, relying on such understandings as they have come to with their neighbors previously for this purpose. There is nothing in the covenant (see Article XXI) to forbid defensive conventions between states, so long as they are really and solely defensive, and their contents are made public. They will, in fact, be welcomed, in so far as they tend to preserve the peace of the world.

To meet the first shock of sudden aggression, therefore, states must rely on their own resistance and the aid of their neighbors. But where, as in the case of the moratorium being observed, the aggres-

sion is not sudden, it is certain that those Powers which suspect a breach of the covenant will have consulted together unofficially to decide on precautionary measures and to concert plans to be immediately put into force if the breach of the covenant takes place. In this event these meetings of the representatives of certain Powers will develop into the Supreme War Council of the league, advised by a joint staff. Some reasons why this staff must be an *ad hoc* body, and not a permanent one, have been stated under Article VIII.

The last paragraph of Article XVI is intended to meet the case of a state which, after violating its covenants, attempts to retain its position on the Assembly and Council.

Article XVII asserts the claim of the league that no state, whether a member of the league or not, has the right to disturb the peace of the world till peaceful methods of settlement have been tried. As in early English law any act of violence, wherever committed, came to be regarded as a breach of the King's peace, so any and every sudden act of war is henceforward a breach of the peace of the league, which will exact due reparation.

Treaties and Understandings

Articles XVIII-XXI describe the new conditions which must govern international agreements if friendship and mutual confidence between peoples are to prevail; the first three provide that all treaties shall be (1) public, (2) liable to reconsideration at the instance of the Assembly, and (3) consonant with the terms of the covenant. These provisions are of the very first importance.

Article XVIII makes registration, and not publication, the condition for the validity of treaties, for practical reasons, since experience shows that the number of new international agreements continually being made is likely to be so great that instant publication may not be possible; but it is the duty of the Secretariat to publish all treaties as soon as this can be done.

Article XIX should be read together with Article XI.

Article XXI makes it clear that the covenant is not intended to abrogate or weaken any other agreements, so long as they are consistent with its own terms, into which the members of the league may have entered, or may enter hereafter, for the further assurance of peace. Such agreements would include special treaties for compulsory arbitration, and military conventions that are genuinely de-

fensive. The Monroe Doctrine and similar understandings are put in the same category. They have shown themselves in history to be not instruments of national ambition, but guarantees of peace.

The origin of the Monroe Doctrine is well known. It was proclaimed in 1823 to prevent America becoming a theater for the intrigues of European absolutism. At first a principle of American foreign policy, it has become an international understanding, and it is not illegitimate for the people of the United States to ask that the covenant should recognize this fact. In its essence it is consistent with the spirit of the covenant, and indeed the principles of the league, as expressed in Article X, represent the extension to the whole world of the principles of the doctrine; while, should any dispute as to the meaning of the latter ever arise between American and European Powers, the league is there to settle it.

The Functions of the League in Peace

Articles XXII-XXV cover the greater part of the ordinary peacetime activities of the league.

Article XXII introduces the principle, with reference to the late German colonies and territories of the Ottoman Empire, that countries as yet incapable of standing alone should be administered for the benefit of the inhabitants by selected states, in the name, and on behalf, of the league, the latter exercising a general supervision. The safeguards which enlightened public opinion demands will in each case be inserted in the text of the actual convention conferring the mandate. No provision is made in the covenant for the extension of such safeguards to the other similar dependencies of the members of the league, but it may be hoped that the maintenance of a high standard of administration in the mandate territories will react favorably wherever a lower standard now exists, and the mandatory principle may prove to be capable of wide application.

The saving clause at the beginning of Article XXIII makes it clear that the undertakings following do not bind the members of the league further than they are bound by existing or future conventions supplementary to the covenant.

Undertaking (a) throws the ægis of the league over the Labor Convention, which itself provides that membership of the league shall carry with it membership in the new permanent labor organization; (b) applies to territories not covered by Article XXII; (d) refers

to the arms traffic with uncivilized and semi-civilized countries. The matters specially mentioned in this article are to be taken merely as instances of the many questions in which the league is interested. Conventions relating to some of these, such as Freedom of Transit and Ports, Waterways and Railways, are now being prepared; with regard to a large number of others similar conventions may be expected in the future.

Article XXIV is of great importance, as it enlarges the sphere of usefulness of the Secretariat of the league to an indefinite degree. The covenant has laid the foundations on which the statesmen and peoples of the future may build up a vast structure of peaceful international coöperation.

Amendment of the Covenant

The provisions of Article XXVI facilitate the adoption of amendments to the covenant, seeing that all ordinary decisions of the Assembly have to be unanimous.

The second paragraph was inserted to meet the difficulties of certain states which might fail to secure the assent of their proper constitutional authorities to an amendment agreed to by the Council and the majority of the Assembly. They are now given the option of accepting the amendment or withdrawing from the league; but there is little doubt that, if the league becomes an institution of real value, the choice will be made in favor of accepting proposals that already command such wide assent.

It is the facility of amendment insured by this article, and the absence of restrictions on the activities of the Assembly, the Council and the Secretariat, which made the constitution of the league flexible and elastic, and go far to compensate for the omissions and defects from which no instrument can be free that represents the fusion of so many and various currents of thought and interest.

JOINT RESOLUTION DECLARING THE WAR AT AN END ¹

*Passed by Congress May 15, 1920; vetoed by the President
May 27, 1920*

SEC. 1.—That the joint resolution of Congress passed April 6, 1917, declaring a state of war to exist between the Imperial German Government and the Government and people of the United States, and making provisions to prosecute the same, be, and the same is hereby, repealed, and said state of war is hereby declared at an end: *Provided, however*, That all property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of the Government of the United States or of any of its officers, agents, or employes, from any source or by any agency whatsoever, shall be retained by the United States and no disposition thereof made, except as shall specifically be hereafter provided by Congress, until such time as the German Government has, by treaty with the United States, ratification whereof is to be made by and with the advice and consent of the Senate, made suitable provisions for the satisfaction of all claims against the German Government of all persons, wheresoever domiciled, who owe permanent allegiance to the United States, whether such persons have suffered, through the acts of the German Government or its agents since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, through the ownership of shares of stock in German, American, or other corporations, or have suffered damage directly in consequence of hostilities or of any operations of war, or otherwise and until the German Government has given further undertakings and made provisions by treaty, to be ratified by and with the advice and consent of the Senate, for granting to persons owing permanent allegiance to the United States, most favored nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights, and confirming to the United States all fines, forfeitures, penalties, and seizures imposed or made by the United States during the war, whether in respect to the property of the German Government

¹ *Congressional Record*, May 15, 1920.

or German nationals, and waiving any pecuniary claim based on events which occurred at any time before the coming into force of such treaty, any existing treaty between the United States and Germany to the contrary notwithstanding.

SEC. 2.—That in the interpretation of any provision relating to the date of the termination of the present war or of the present or existing emergency in any acts of Congress, joint resolutions, or proclamations of the President containing provisions contingent upon the date of the termination of the war or of the present or existing emergency, the date when this resolution becomes effective shall be construed and treated as the date of the termination of the war or of the present or existing emergency, notwithstanding any provision in any act of Congress or joint resolution providing any other mode of determining the date of the termination of the war or of the present or existing emergency.

SEC. 3.—That until by treaty or act or joint resolution of Congress it shall be determined otherwise, the United States, although it has not ratified the Treaty of Versailles, does not waive any of the rights, privileges, indemnities, reparations, or advantages to which it and its nationals have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof or which under the Treaty of Versailles have been stipulated for its benefit as one of the Principal Allied and Associated Powers and to which it is entitled.

SEC. 4.—That the joint resolution of Congress, approved December 7, 1917, declaring that a state of war exists between the Imperial and Royal Austro-Hungarian Government and the Government and the people of the United States and making provisions to prosecute the same, be, and the same is hereby, repealed, and said state of war is hereby declared at an end, and the President is hereby requested immediately to open negotiations with the successor or successors of said government for the purpose of establishing fully friendly relations and commercial intercourse between the United States and the Governments and peoples of Austria and Hungary.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *B.*, boletin, bulletin, bollettino; *Bundesbl.*, Switzerland, Bundesblatt; *Omd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Our. Hist.*, Current History (New York Times); *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brazil); *E. G.*, Eidgenossische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; International High Commission; *J. O.*, Journal officiel (France); *The League*, The League (London); *League of nations, O. J.*, League of nations, Official Journal; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notices*, U. S. State Dept. Press Notices; *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

October, 1919.

13 INTERNATIONAL AIR NAVIGATION CONVENTION. Agreed to by Allied and Associated Powers subject to certain reservations. French and English texts 66th Cong. S. Doc. 91. Signed by principal allied powers and sixteen other nations. Delay of six months was provided for the adhesion of other countries. On April 12 this delay was extended to June 1. *N. Y. Times*, June 2, 1920, p. 17.

20 BELGIUM—GREAT BRITAIN. Agreement respecting boundaries in East Africa signed Feb. 3, 1915, was ratified by both countries at London. *G. B. Treaty series*, 1920, No. 2 (*Cmd.* 517).

29-November 13 PARAGUAY. House voted on October 29 and Senate on November 13 to join the League of Nations. *N. Y. Times*, March 3, 1920.

November, 1919.

13 BOLIVIA—COLOMBIA. General arbitration treaty concluded. *P. A. U.*, March, 1920, 50: 346.

- 14 CHILE. Notification of adhesion to League of Nations on November 14 received at State Department on March 2. *N. Y. Times*, March 3, 1920, p. 2.
- 21 PERSIA. Adhered to League of Nations. *League of Nations, O. J.*, February 20, 1920, p. 15.
- 27 BULGARIA—GREECE. Convention providing for free emigration of racial, religious or linguistic minorities, signed at Neuilly-sur-Seine. (*Cmd.* 589.)

December, 1919.

- 5 SERB-CROAT-SLOVENE STATE. Declared accession to treaty of peace with Austria, treaty with Allied Governments, and agreements with regard to Italian reparation payments and contributions to the cost of liberation of territories of the former Austro-Hungarian Empire. *G. B. Treaty series*, 1920, No. 8. (*Cmd.* 638.)
- 8 AUSTRIA-HUNGARY. Allied Governments signed declaration modifying agreement of September 10, 1919, between Allied and Associated Powers with regard to cost of liberation of the territories of the former Austro-Hungarian monarchy. *G. B. Treaty series*, 1920, No. 7. (*Cmd.* 637.)
- 8 ITALIAN REPARATION PAYMENTS. Allied Governments signed declaration modifying agreement of September 10, 1919, between the Allied and Associated Powers. *G. B. Treaty series*, 1920, No. 9. (*Cmd.* 639.)

9-April 26, 1920. ADRIATIC QUESTION. Joint British, French and American memorandum of the 9th December, 1919; telegram from Earl Curzon of Kedleston to Sir Eyre Crowe of the 8th December, recording an interview with Signor Scialoja; telegram from Sir Eyre Crowe to Earl Curzon of Kedleston of the 9th December; Italian memorandum of the 6th January, 1920; Franco-British proposals of the 9th January; Italian memorandum of the 10th January; revised proposals made by the British and French prime ministers to the Italian prime minister, accepted by the latter and handed to the Serb-Croat-Slovene delegation on the 14th January; memorandum of Serb-Croat-Slovene Government of the 20th January; inquiry of the United States Government of the 19th January; note of Mr. Lloyd George and M. Millerand of the 23rd January;

- memorandum of Serb-Croat-Slovene Government of the 28th January; President Wilson's note of the 10th February; reply of Mr. Lloyd George and M. Millerand of the 17th February; President Wilson's note of the 24th February; reply of Mr. Lloyd George and M. Millerand of the 26th February. *Cmd.* 521. President Wilson's reply to memorandum of February 26. *N. Y. Times*, March 8, 1920, p. 1. Italian Government notified d'Annunzio that it would accept Wilson's project for the settlement of the Adriatic question. *N. Y. Times*, April 2, 1920, p. 4. Supreme Council at San Remo decided on April 26th to allow the question to remain in negotiation between the Italian and Yugoslav Governments. *N. Y. Times*, April 27, 1920, p. 2.
- 9 NORWAY—PORTUGAL. Commercial treaty of December 31, 1895, amended April 11, 1903, to take effect December 13, 1920, denounced by Norway. *D. G.*, January 7, 1920, Series I, p. 29.

January, 1920.

- 2 GERMAN-POLISH CONFERENCE. Held at Paris to consider questions of administration of the regions ceded to Poland by Germany. *Figaro*, January 3, 1920, p. 1.
- 2 SWITZERLAND. Correspondence between Supreme Council and Swiss Federal Council on subject of Swiss neutrality under the League of Nations made public. *The League*, February, 1920, 2: 201.
- 6 PLEBISCITE ZONES.—Notes exchanged between Supreme Council and German delegation regarding number of troop effectives destined for territories in which plebiscites are to be held. *Temps*, January 7, 1920, p. 4.
- 6-February 25. INTERNATIONAL UNION FOR CHILD-SAVING. The Union International de Secours aux Enfants, organized in Geneva, January 6-8, under the patronage of the Red Cross International Committee, held a congress in Geneva, February 25-27. *Rev. int. de la Croix-Rouge*, January and March, 1920, 2: 38, 276.
- 7-June 4. HUNGARIAN PEACE TREATY. Hungarian peace delegation arrived in Paris on January 7th to receive the treaty which had been held for three months pending establishment of a representative government. Terms of peace were handed to Count

Apponyi on January 15th, and fifteen days were given for their consideration. *Current History*, February, 1920, 11 (pt. 2): 199. Request for extension of time for consideration was granted on January 31st, the limit being extended to February 12th. A second extension of time was granted to February 20th as a result of Hungary's request that Allies rewrite her peace treaty. *Current History*, March, 1920, 11 (pt. 2): 447. Partial revision of economic clauses was agreed to by Supreme Council on March 12th. *N. Y. Times*, March 13, 1920. Reply of Allies to objections of Hungarian envoys, delivered May 5th, gave ten days in which to accept or reject the treaty. *Temps*, May 7, 1920, p. 1; *Times*, May 7, 1920, p. 13. Allies notified that Hungary would accept and sign the treaty, *N. Y. Times*, May 22, 1920, p. 17. Treaty signed on June 4th in the Grand Trianon, Versailles. *N. Y. Times*, June 5, 1920, p. 17.

- 7 LAMMASCH. Heinrich Lammasch, international jurist, member of Hague Tribunal and representative of Austria at the Peace Conference, died at Salzburg, Austria. He was born in 1853. One of his best known works is *Das Völkerrecht nach dem kriege*. *Times*, January 8, 1920, p. 9.
- 8 PANAMA. Ratified peace treaty with Germany. *P. A. U.*, March, 1920, 50: 346.
- 10 BELGIUM. Date proclaimed of sovereignty over former Prussian regions of Eupen and Malmedy. *Current History*, March, 1920, 11 (pt. 2): 440.
- 10 GERMAN PEACE TREATY, Versailles, June 28, 1919. Ratifications exchanged. *Temps*, January 11, 1920; *Monit.*, January 12-13, 1920. Promulgated by France. *J. O.*, January 11, 1920.
- 10 LEAGUE OF NATIONS. Neutral states of Argentina, Chile, Colombia, Denmark, Spain, Norway, Paraguay, Netherlands, Persia, Salvador, Sweden, Switzerland, and Venezuela invited to join the League within two months. *Temps*, January 13, 1920, p. 1.
- 10 PANAMA—UNITED STATES. International gold clearance fund convention signed. *International High Commission*.
- 10 POLISH TREATY, Versailles, June 28, 1919. Promulgated by France, with text of treaty. *J. O.*, January 11, 1920, p. 514.
- 10-11 PRISONERS OF WAR. War prison committee began work of repatriating German prisoners. *Current History*, March, 1920, 11 (pt. 2): 404.

- 10 **SCAPA FLOW REPARATIONS.** Text of letter published, with M. Clémenceau handed to Baron von Lersner after exchange of ratifications. *Times*, January 12, 1920, p. 14.
- 10 **SPAIN.** Adhered to League of Nations. *League of Nations O. J.*, February, 1920, p. 16.
- 11 **ALSACE-LORRAINE.** President of France issued decree prescribing methods by which citizens might regain French nationality. *J. O.*, January 12, 1920, p. 550.
- 11 **FRANCE—GERMANY.** Diplomatic relations renewed. *Figaro*, January 13, 1920, p. 1.
- 11 **RHINELAND HIGH COMMISSION.** Entered upon its duties as representative of Allied Governments in occupied territory of Germany west of the Rhine and the bridge-heads. Headquarters at Coblenz. *Times*, January 13, 1920, p. 14.
- 13 **ARGENTINE REPUBLIC.** Declared formal adhesion to League of Nations. *Temps*, January 18, 1920, p. 1.
- 13 **AZERBAIDJAN.** Conceded *de facto* recognition by Supreme Council in the name of Allied Governments. *Figaro*, January 17, 1920, p. 1.
- 13 **FRANCE—NICARAGUA.** Treaty of commerce of January 27, 1902, abrogated by Nicaragua. France had denounced this treaty on September 10, 1918. *Ga. de Madrid*, January 15, 1920, p. 157.
- 18 **GEORGIA.** Conceded *de facto* recognition by Allied Governments. *Figaro*, January 17, 1920, p. 1.
- 18 **GERMANY—GREAT BRITAIN.** Trade relations resumed and United Kingdom import restrictions removed. *Cmd.* 512.
- 13 **LEAGUE OF NATIONS.** First meeting called by President Wilson. Text. *N. Y. Times*, January 14, 1920, p. 3.
- 14 **HAITI—UNITED STATES.** International gold clearance fund convention signed. *International High Commission*.
- 15-22 **BALTIC CONFERENCE.** Representatives of Finland, Esthonia, Latvia, Lithuania, and Poland met to form a plan of defensive alliance. *Temps*, January 26, 1920, p. 1.
- 15 **INTERNATIONAL FINANCIAL CONFERENCE.** Memorial signed by prominent bankers and business men, dealing with world's economic problem, was presented to the Governments of Great Britain, France, United States, Holland, Switzerland, Den-

mark, Norway and Sweden, proposing a conference of financial representatives of the countries concerned, including Germany and Austria. Text. *Times*, January 16, 1920, p. 12.

15-April 2. WILHELM II, EX-EMPEROR OF GERMANY. Allied note sent to Holland on January 15th, demanding extradition of the Kaiser. Text *Times*, January 19, 1920, p. 12; Holland's answer rejecting Allies' demands despatched January 22. *Temps*, January 25, 1920, p. 1; reply of council of premiers sent to Holland on February 14th intimating that Allies would consider favorably an offer from Holland to intern the ex-Kaiser and be responsible for his acts. *Current History*, March, 1920, 12 (pt. 2): 376; *Times*, February 17, 1920, p. 18. Reply of Dutch Government of March 5th to note of February 14th sent second refusal to comply with Allied demands. *Times*, March 6, 1920, p. 13; *N. Y. Times*, March 6, 1920, p. 3. Allies sent new note to Holland on April 1st, emphasizing responsibility which Dutch Government had assumed in guarding the Kaiser, stating that his internment at Doorn was not considered a satisfactory solution. *N. Y. Times*, April 2, 1920, p. 1.

16 BRAZIL—GERMANY. Ratification of Treaty of Versailles by Brazil deposited. *P. A. U.*, June, 1920, p. 681.

16-May 14. LEAGUE OF NATIONS. The Council held its first session in the French Foreign Office on January 16th. The second session was held in St. James's Palace, London, on February 11-13. *League of Nations, O. J.*, February-March, 1920. The third session was held in Paris on March 14th. *Temps*, March 15, 1920. The fourth session was held in Paris on April 11th. *Temps*, April 13th, p. 2. The fifth session was held in Rome on May 14th. *Temps*, May 14, 1920, p. 1.

16-March 12. RUSSIAN TRADE RELATIONS. Supreme Council issued communiqué on January 16th permitting exchange of goods through coöperative societies between Russia and Allied and neutral countries. *Times*, January 17, 1920, p. 10. Soviet Government on February 1st authorized Russian Central Co-operatives to enter into commercial relations with cooperatives and firms in western Europe, America, and other countries. *N. Y. Times*, February 2, 1920. Supreme Council issued state-

- ment on February 24th of future policy toward Russia with a view to encourage trade. Text *N. Y. Times*, February 25, 1920, p. 1; *Times*, February 25, 1920, p. 16. President Wilson sent note to Allies requesting postponement of any Russian trading plan until American views on proposal were presented. *Wash. Post*, March 13, 1920, p. 1.
- 17-24 PAN-AMERICAN FINANCIAL CONFERENCE. Second conference held in Washington. *P. A. U.*, February, 1920, 50:125.
18. PERU. New constitution, passed by National Assembly on December 27, 1919, repealing the constitution of November 10, 1860, was promulgated. *P. A. U.*, April, 1920, p. 457.
- 19 SHANTUNG. Japan notified China that Japan, having succeeded to Germany's rights in Shantung on January 10th, was ready to negotiate with China for their return and for the retrocession of the leased territory. Text of offer. *Temps*, January 26, 1920, p. 2.
- 20 SUPREME COUNCIL OF THE PEACE CONFERENCE. Closed its long and historic services, transferring its functions to a council of ambassadors and a council of premiers. *Current History*, March, 1920, 11 (pt. 2): 384.
- 21 AUSTRIA—CZECHO-SLOVAKIA. Negotiations successfully concluded, relating to imports and exports, indebtedness, coal deliveries, sugar, etc. *Times*, January 21, 1920, p. 11.
- 22 GERMAN NATIONALS IN EGYPT. Order of King George V promulgated regarding property rights and interests. *Lond. Ga.*, February 3, 1920, p. 1389.
- 24 REPARATIONS COMMISSION. Organized. M. Jonnart, French delegate, elected president. *Figaro*, January 25, 1920, p. 1. Resigned, February 17; M. Raymond Poincare elected president. *Figaro*, February 23, 1920.
- 25-April 22. GERMAN WAR CRIMINALS. German proposal that persons accused under the treaty of violating the laws of war be tried at Leipzig was sent to Supreme Council on January 25th. On February 3d the list of accused was handed to Baron von Lersner, who declined to transmit it and resigned his post. An unofficial list was received in Berlin on February 4th. On February 7th, the Allies sent the official list to Premier Bauer, accompanied by a letter rejecting the proposal of January

25th that trial in German courts be substituted for trial before an international tribunal. On February 9th, Bauer issued a statement declaring extradition for trial was an impossibility and requesting some other arrangement. On February 13th, the Supreme Council replied to German note of January 25th, consenting to trial in German courts, reserving right to present evidence and review decisions. *Current History*, March, 1920, 12 (pt. 2): 373. Forty names of accused, selected from list to be tried by Germany. *Temps*, March 3, 1920, p. 1. Preliminary proceedings begun for trial by Supreme Court of Germany. Date of main trial has not been fixed. *N. Y. Times*, April 23, 1920, p. 3.

- 25 HUNGARY. National assembly elections held, with about 95% of votes cast for monarchical form of government. Council of Ambassadors issued announcement on February 2 that Allies would not permit restoration of Hapsburg monarchy. *Current History*, March, 1920, 11 (pt. 2): 449.
- 26 ARMENIA. Republic formally recognized by the United States Government. *Current History*, March, 1920, 11 (pt. 2): 495.
- 29 TAONA-ARICA QUESTION. Peru gave notice of intention to submit her various claims in the controversy to the League of Nations. *Current History*, April, 1920, 12: 67.
- 30 POLAND—SOVIET RUSSIA. Offer of peace made to Poland by Soviet Government. *Times*, February 3, 1920, p. 13.
- 31 GREECE—SPAIN. Convention of commerce and navigation of September 23, 1903, will be tacitly extended every three months. *Ga. de Madrid*, February 3, 1920, p. 408.
- 31 LEAGUE OF NATIONS. Lord Grey's letter to London *Times* explained American opposition to unqualified acceptance of the League covenant. *Times*, January 31, 1920, p. 13.
- 31 PARAGUAY—UNITED STATES. Commercial treaty of October 20, 1919, ratified by U. S. Senate. *Text Cong. Rec.*, January 31, 1920, p. 2449.

February, 1920.

- 1 LEAGUE OF NATIONS. Scandinavian premiers and foreign ministers of Denmark, Norway and Sweden in conference at Copenhagen, decided to accept invitation to join the League of Nations. *Times*, February 2, 1920, p. 11.

- 2-15 **ESTHONIA—SOVIET RUSSIA.** Peace treaty signed at Dorpat in which Esthonia's independence was recognized. Text *Current History*, June, 1920, 12: 400. Treaty approved by Esthonian Assembly. *Temps*, February 15, 1920, p. 4.
- 7-March 1. **MONROE DOCTRINE.** Request made public of Salvador's Minister of Foreign Affairs to State Department asking new definition of term in the light of Article XXI of the League Covenant. *Costa Rica Ga.*, January 13, 1920, p. 28; *N. Y. Times*, February 8, 1920, p. 1. Reply of March 1st quoted President Wilson's address of January 6, 1916, before the Pan-American Scientific Congress. *N. Y. Times*, March 2, 1920.
- 9 **ASIA MINOR.** Secret memorandum of August 8, 1917, from Bal-four, British Secretary of Foreign Affairs, to the French Government, concerning final division of Asia Minor, was made public. *Current History*, March, 1920, 11 (pt. 2): 504.
- 9 **FRANCE—GERMANY.** France notified Germany that the following conventions, suspended during the war, were again put into effect: Article 2 of the trade mark convention of October 12, 1871; agreements of December 30, 1914, and March 24, 1914, concerning measurement of vessels; agreement of January 13, 1914, regarding frontier trade in alcohol and spirits; extradition conventions and reciprocity declarations with Anhalt, Baden, Bavaria, Bremen, Hamburg, Hesse-Darmstadt, Lippe-Detmold, Lubeck, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, Prussia, Russ, Saxony, Saxe-Altenburg, Saxe-Coburg-Gotha, Saxe-Weimar, Waldeck, and Württemberg. *J. O.*, March 25, 1920, p. 4767.
- 9 **GERMANY—GREAT BRITAIN.** King George V issued decree that January 10, 1920, is official date of termination of war. *London Ga.*, February 10, 1920.
- 9 **GREAT BRITAIN—UNITED STATES.** British Order in Council promulgated in which certain provisions in United States copyright law of December 18, 1919, are agreed to. Text *London Ga.*, February 10, 1920, p. 1675.
- 9 **INTERNATIONAL LABOR BUREAU.** Moved from London to Paris. M. Albert Thomas was elected director-general on January 27. *Times*, February 9, 1920, p. 16.

- 9 LITHUANIA. Letter made public from United States Government to Lithuania refusing recognition of her independence. *N. Y. Times*, February 10, 1920, p. 17.
- 9 SPITZBERGEN INTERNATIONAL CONVENTION. Signed at Paris by representatives of the United States, Great Britain, Denmark, France, Italy, Japan, Norway, Netherlands, and Sweden, giving sovereignty to Norway. *Times*, February 10, 1920, p. 11. *Temps*, February 11, 1920, p. 1.
- 10-March 19. GERMAN PEACE TREATY, Versailles, June 28, 1919. Reported back to U. S. Senate from Committee on Foreign Relations, with the same reservations adopted in November, 1919. Debate resumed on February 16, proceeding almost daily until final action on March 19th, when the vote was 49 for ratification and 35 against, lacking the necessary two-thirds majority for ratification. *Cong. Rec.*, February 10 to March 19, 1920. For texts of reservations and vote upon each, see *this JOURNAL*, Vol. 14, Nos. 1-2, pp. 199 and 203.
- 10 SERB-CROAT-SLOVENE STATE. Peace treaty with Germany ratified. *J. O.*, March 13, 1920, p. 4138.
- 10-May 5. SLESVIG. Plebiscite vote in first zone, held February 10th, resulted in 75% Danish majority. The vote in second zone held March 14th (Flensburg District), resulted in Danish minority of about 28%. *Temps*, April 27, 1920, p. 1.
- 11-14. MEXICO—UNITED STATES. Trade conference called by American Chamber of Commerce of Mexico was held in City of Mexico, with 200 delegates in attendance, many from the United States. *P. A. U.*, April, 1920, 50:442.
- 12 GREAT BRITAIN—SOVIET RUSSIA. Agreement signed at Copenhagen for exchange of British and Russian war prisoners. *Current History*, March, 1920, 11 (pt. 2): 404.
- 20 MEXICO—UNITED STATES. Request of the Mexican Government for permission to import arms and munitions from the United States was refused by the State Department. *N. Y. Times*, February 26, 1920, p. 8.
- 13-March 22. ROBERT LANSING, Secretary of State of the United States, resigned his portfolio. Bainbridge Colby, his successor, was confirmed on March 22, 1920. *Cong. Rec.*, February 14 and March 22, 1920.

- 15 BULGARIAN PEACE TREATY, Neuilly, November 27, 1919. Decree of ratification issued by King of Italy. *G. U.*, March 1, 1920, p. 639.
- 15-May 11. TURKISH PEACE TREATY. Premier Millerand announced decision of Allies to allow the Turks to keep the seat of government at Constantinople, on condition that the Dardanelles be placed under international control and that the Turkish army be reduced to a mere police force. A special memorandum from the Indian Privy Council voiced strong disapproval of people of India to decision. *Current History*, April, 1920, 12: 103. Delegation of Moslems from India arrived in London to protest against rigorous conditions of peace which might have grave consequences for India. *Temps*, March 4, 1920, p. 1. New Armenian massacres prompted the Supreme Council to dispatch a note to Turkish Government containing drastic demands, including the military occupation of Constantinople with the support of an Allied fleet. On March 10th, the report of the Council's Commission to Constantinople was presented at London meeting. *Current History*, April, 1920, 12: 103. Text of American note relating to Turkey made public. *Times*, April 1, 1920, p. 15. Turkish Treaty summary received in Washington, May 8. *N. Y. Times*, May 9, 1920, p. 9. Presented to Turkish envoys at 4 p.m. May 11th, in French Foreign Office. One month's time given for consideration. *Times*, May 12, 1920, p. 17. Official summary, *Temps*, May 12, 1920, p. 1. Turkish peace delegation sent note to Peace Conference asking further delay until July 11th to present answer to the Allies. *N. Y. Times*, May 31, 1920, p. 11.
- 16-27 INTERNATIONAL COURT OF JUSTICE. Conference of neutral states, called by Dutch Government to meet at The Hague to discuss formation of a permanent court of justice (in accordance with Art. XIV of the League covenant) was participated in by Norway, Sweden, Denmark, Switzerland and Holland. Holland was invited to transmit the plan agreed upon to the Secretary-General of the League of Nations for the use of the commission of the League which is to prepare a project for an international court. Chief points of program summarized. *N. Y. Times*, February 29, 1920, p. 6; *Times*, March 1, 1920, p. 13.

- 20 FRANCE—GREAT BRITAIN—SWITZERLAND. Provisional convention dealing with air traffic, signed by Switzerland. Comes into force March 1, 1920. *N. Y. Times*, February 21, 1920, p. 1.
- 24 JAPAN—SOVIET RUSSIA. Peace proposal to Japan. Text. *Times*, March 4, 1920, p. 13.
- 24 SOVIET RUSSIA. Renewed peace proposals sent to United States Government and other Allied and Associated Powers giving assurances of democratic government, guarantees in the form of economic and mining concessions, etc. Text *Wash. Post*, March 6, 1920, p. 5; *Nation* (N. Y.), March 13, 1920, 110:349.
- 27 SAAR BASIN COMMISSION. Issued proclamation that it had taken control of the region in name of League of Nations and would exercise all powers formerly belonging to German Empire, Prussia and Bavaria, and would fulfil requirements of peace treaty. *Temps*, February 28, 1920, p. 1.
- 27 SWEDEN—UNITED STATES. Proclamation of President Wilson put into effect on February 1, 1920, in our relations with Sweden, the copyright act of March 4, 1909. A decree was issued by the King of Sweden, on February 1, 1920, entitling citizens of the United States to benefits conferred by the new copyright laws of Sweden. *Proclamation* No. 1557.
- 28 CZECHO-SLOVAKIA. Constitution adopted. Approved by President Masaryk on March 5th. Summary. *Press notice*, March 15, 1920; *New Europe*, April 29, 1920, 15:61.
- 28 GREAT BRITAIN—UNITED STATES. Agreement entered into between naval authorities of the two countries on question of collisions at sea during war. Arbitration boards have been set up in London and in Washington to determine cases of collision which have arisen. *Times*, February 28, 1920, p. 13.

March, 1920.

- 1 FRANCE—SWITZERLAND. Provisional agreement of December, 1919, regulating air traffic came into force. *E. G.*, February 18, 1920, p. 103.
- 1 GREAT BRITAIN—SWITZERLAND. Provisional agreement of November 6, 1919, regulating air traffic came into force. *E. G.*, February 18, 1920, p. 109.

- 2-8 RED CROSS. General council of the League of Red Cross Societies met in its first session at Geneva, with 28 states represented. *Rev. int. de la Croix-Rouge*, May 15, 1920, 2: 311.
- 2-April 17. REPARATIONS COMMISSION. Decree issued concerning demands for reparation. Text. *J. O.*, March 4, 1920, p. 3499. Decree modified. *J. O.*, April 21, 1920, p. 6211.
- 3 GERMANY—SOVIET RUSSIA. The German Minister of Foreign Affairs has decided to send three commissions to Russia: One to study the economic situation, a second, of physicians, to study the typhus, and a third to make a survey of the general political situation of the country. *Temps*, March 3, 1920, p. 1.
- 4 DENMARK. Joined League of Nations. *Current History*, May, 1920, 12: 206; *Wash. Post*, March 5, 1920, p. 9.
- 4 GERMAN LOAN. Supreme Council decided to allow Germany to launch an internal loan, which would take precedence over any indemnity payments she is called upon to make. *Evening Star*, March 4, 1920.
- 4 SWEDEN. Accession voted to League of Nations. *Current History*, May, 1920, 12: 206.
- 5 NORWAY. Voted accession to League of Nations. *Current History*, May, 1920, 12: 206.
- 5-May 16. SWITZERLAND. Voted in favor of membership in League of Nations on March 5th. Definite decision deferred until after taking of plebiscite on May 16th. *Bundesbl.*, March 17, 1920, p. 483; *N. Y. Times*, March 7, 1920, p. 2. Referendum on May 16th gave 11½ cantonal votes for adherence to League and 10½ against it. Popular majority 100,000. *N. Y. Times*, May 17, 1920, p. 1.
- 8 CUBA. Ratified treaty with Germany. *J. O.*, March 10, 1920, p. 2.
- 8 SYRIA. Independence declared. Emir Feisal, son of the King of Hedjaz, proclaimed King of Syria at Damascus, on March 11th. *Current History*, April, 1920, 12: 112.
- 8 WORLD ECONOMIC CONDITIONS. Memorandum issued by Supreme Council. Conclusions. *Cmd.* 646; *Wash. Post*, March 10, 1920, p. 1; *Edin. Rev.*, April, 1920, 231: 401.
- 9 PERU. Ratified German Peace Treaty. *J. O.*, March 11, 1920, p. 12.

- 10 BAVARIA. Ministry of Foreign Affairs abolished as part of movement toward greater centralization at Berlin. *Press notice*, March 10, 1920.
- 10 EGYPT. Resolution proclaiming independence of Egypt adopted by legislative assembly. *Wash. Post*, March 11, 1920, p. 1.
- 10 FRANCE. Created office of verification and compensation to administer application of Part X (Economic Clauses) of Peace Treaty. *J. O.*, March 13, 1920, p. 4138.
- 10 GUATEMALA. Legislative assembly passed a decree authorizing President to negotiate plans for a union of Central American States. Text *Guatemalteco*, March 10, 1920, No. 63.
- 10 NETHERLANDS. Adhesion to League of Nations filed. *Temps*, March 7, 1920, p. 1.
- 10 SALVADOR. Ratified decree of March 5th providing adhesion to League of Nations. *Costa Rica Ga.*, March 18, 1920, p. 255; *P. A. U.*, June, 1920, p. 682.
- 12 BESSARABIA—ROUMANIA. Supreme Council decided in favor of reunion. Text *Times*, March 12, 1920, p. 15.
- 13-April 4. GERMANY. Junker counter-revolution on March 13th attempted overthrow of Ebert government. President Ebert left Berlin and established headquarters of the republican government at Stuttgart on March 15th. On March 13th, the Majority Socialist party issued a manifesto for a general strike. Wolfgang von Kapp proclaimed himself Imperial Chancellor and Prime Minister of Prussia. On the 14th the general strike proclaimed by President Ebert went into effect. This strike, together with lack of support for the new government, resulted in Kapp's resignation on March 17th, and the restoration of the Ebert government. In the meantime, the Communist "Spartacans" conducted an uprising throughout Germany, and especially in the industrial region east of the Rhine. On March 21st, President Ebert and the members of his government returned to Berlin and began vigorous measures to combat the revolt. *Current History*, April, 1920, 12:1. According to the Peace Treaty and a subsequent agreement of August 8, 1919, only 25,000 German government troops were permitted within the neutral zone east of the Rhine. The German

Government on March 17th requested Allied permission to dispatch her Reichswehr forces to the Ruhr district to suppress armed disorders following the Kapp *coup d'état* in Berlin. On March 23d, the French Government, acting on its own initiative, sent a note to the German Government stating that the entry of German troops into the prohibited Rhine area would constitute an infringement of Articles 43 and 44 of the Peace Treaty and could not be permitted. On April 4th, the German Government sent troops into Ruhr district and began an active offensive against the insurgent workers. French note of same date warned Germany that France would consider military measures. On April 6th, the peaceful occupation by France of the Rhine area was accomplished and martial law proclaimed. On April 8th, Germany supplemented her protest to Allies by formal appeal to League of Nations to intervene on behalf of Germany against France. British Government disavowed action of France. Belgium approved, offering troops to aid the occupation. After series of notes between France and Great Britain, an agreement was announced on April 4th, whereby France would take no further action without Allies' consent and would withdraw her troops as soon as Germans had evacuated forbidden area. Period for evacuation extended to May 10th. Further discussion reserved for San Remo conference on April 19th. *Current History*, May, 1920, 12: 231. See San Remo Conference, April 19th to 26th.

- 13 SOVIET RUSSIA—UNITED STATES. United States notified Supreme Council that it considered it impossible to establish diplomatic relations with the Soviets. *Temps*, March 14, 1920, p. 1.
- 13 VENEZUELA. Declared adhesion to League of Nations, completing list of thirteen states invited to accede to the Covenant. *Current History*, April, 1920, 12: 66.
- 16 CANADA. Ratified Bulgarian Peace Treaty. *Wash. Post*, March 17, 1920, p. 1.
- 16 CONSTANTINOPLE. Occupied by Allied forces. *N. Y. Times*, March 18, 1920, p. 1.
- 17-22 CHILE—UNITED STATES. Notes exchanged between Chilean Foreign Office and the American Ambassador on the subject of controversy between Bolivia and Peru with reference to the

port of Arica. Chile had been requested by the United States to use her efforts to prevent a conflict between Peru and Bolivia. Summary *Wash. Post*, March 27, 1920, p. 5.

- 19 CANADA—FRANCE. Canadian Government terminated the convention respecting commercial relations signed September 19, 1907, and the supplementary convention signed January 23, 1909, to take effect on June 19, 1920. *Lond. Ga.*, April 27, 1920, p. 4846.
- 19 JAPAN. Ratified German Peace Treaty; also treaty with Poland. *J. O.*, March 21, 1920, p. 4550.
- 21 GERMANY—ITALY. Article 299 of the Peace Treaty with Germany annulled all commercial treaties between Italy and Germany made on or before August 25, 1916. King Emmanuel issued decree excluding from such annulment contracts relating to transferred property, mortgages, mines and contracts between private individuals and the state, province, municipality or other juridical persons. *G. U.*, April 12, 1920, p. 1099.
- 21 HUNGARY. A kingdom, as the constitutional form of government, was proclaimed by an Order in Council. *Times*, March 24, 1920, p. 16.
- 21-April 28. POLAND—SOVIET RUSSIA. Peace conditions of the Soviet issued on March 21st. *Temps*, March 23, 1920, p. 1; *Current History*, May, 1920, 12:254. On April 2d, the Poles refused a Soviet proposal for an armistice on the entire battle front and a peace conference in Esthonia. *Naval Inst. Proc.*, May, 1920, 46:794. On April 28th the Poles began a new war on Russia, assisted by the Ukrainians, in an effort to regain territory annexed by Russia, to serve as a chain of buffer states. *Current History*, June, 1920, 12:454.
- 22 CHINA. Troops sent to northern frontier of China to prevent entrance of Russian Bolsheviks. *Temps*, March 23, 1920, p. 4.
- 22 LEBANON (Asiatic Turkey). Independence proclaimed at Baalbek. *Press notice*, March 30, 1920.
- 25 FRANCE—GERMANY. French-German resolutions approved relative to application of Section IV of Part X of the Treaty of Versailles concerning property and private interests. *J. O.*, April 29, 1920, p. 6474.

- 26 **ESTHONIA—LATVIA.** Agreement reached on question of frontiers. Pending questions to be decided by a court of arbitration presided over by a British officer. *Times*, March 26, 1920, p. 13.
- 26 **GUATEMALA.** Appointment announced of a special mission to the Governments of El Salvador and Honduras for the purpose of initiating a Central American Union. *Guatemalteco*, March 5, 1920, p. 1.
- 28 **BELGIUM—NETHERLANDS.** Political or collective treaty drafted by the Commission of 14, in which the Powers of the Council of Five, together with Belgium and Holland, abrogate the clauses of the treaties of 1839 which impose and guarantee Belgian neutrality. Submitted to the Belgian Committee of Foreign Affairs and to the Cabinet. *Times*, March 31, 1920, p. 13.
- 28-May 25. **BELGIUM—NETHERLANDS.** Fluvial treaty, substitute for the treaty of 1839, drafted by the Belgian and Dutch delegations and submitted to the Belgian Committee of Foreign Affairs and to the Cabinet. It deals with the régime of the Scheldt and the Ghent-Terneuzen Canal and with the construction of new canals through Dutch territory. *Times*, March 31, 1920, p. 13. Negotiations suspended, May 26, 1920. *N. Y. Times*, May 26, 1920, p. 17.
- 28 **MEXICO.** Announced that Mexico would resume interest payments on its foreign debt of about \$100,000,000, a third of which is held in the United States. *Naval Inst. Proc.*, May, 1920, 46:795.
- 29 **ALBANIA.** Declaration of independence. *Temps*, March 30, 1920, p. 1.
- 29 **CHINA—SOVIET RUSSIA.** Telegraphic message from Soviets, addressed to the people of China, promised to annul all treaties and renounce all privileges improperly acquired by the Tsar's government. *Times*, April 1, 1920, p. 15.
- 31 **FIUME.** Independence proclaimed by d'Annunzio. *Times*, April 4, 1920, p. 1.
- April, 1920.*
- 1-June 1. **ARMENIA.** Mandate offered to League of Nations by Supreme Council. *N. Y. Times*, April 2, 1920, p. 8; *Times*, April 1, 1920, p. 16. Publicly discussed on April 11th; text of Coun-

cil's reply rejecting mandate. *Current History*, May, 1920, 12: 205, 328. Allied premiers decide to establish a free and independent republic. *N. Y. Times*, April 24, 1920. League of Nations council in memorandum to Supreme Council insisted that Powers should guard Armenia, sharing financial burden. *Text Times*, April 28, 1920, p. 15. Senate Res. 359 was sent to President Wilson on May 13th, requesting him to send a warship and force of marines to port of Batum to protect American lives and property in Armenia. *Cong. Rec.*, May 13, 1920, p. 7542. President Wilson, on May 22d, agreed to fix boundaries of new Armenia. *N. Y. Times*, May 23, 1920, p. 1. Mandate offered to United States by San Remo conference. On May 24th, President Wilson addressed a message to Congress advising and requesting that executive power be granted to accept mandate. *Text Cong. Rec.*, May 24, 1920, p. 8137. H. Res. 570 asking for information as to mandate for Armenia was introduced and referred to Committee on Foreign Affairs. *Cong. Rec.*, May 26, 1920, p. 8323. Senate Committee on Foreign Relations reported concurrent resolution (S. Con. Res. 27), declining to grant to the Executive the power to accept a mandate over Armenia. *Cong. Rec.*, May 27, 1920, p. 8334. Senate rejected President's recommendation on June 1st, by a vote of 62 to 12. An amendment providing for appointment of a commission to study rehabilitation of Armenia and providing for an American loan of \$50,000,000 was also defeated by a vote of 41 to 34. *Cong. Rec.*, June 1, 1920, p. 8691.

- 1 GERMANY—SERBIA. Diplomatic relations renewed. *Times*, April 1, 1920, p. 15.

1-May 21. PEACE RESOLUTION IN U. S. CONGRESS. Joint resolution (H. J. Res. 327) terminating the state of war between the Imperial German Government and the United States, introduced into the House of Representatives and referred to Committee on Foreign Affairs on April 1st. Reported back with minority report on April 6th (H. Rept. 801). Passed House April 9th, and sent to the Senate. Referred to Foreign Relations Committee on April 12th. Reported with amendment providing for termination of war with Austria and Hungary also, on April 30th (S. Rept. 568). Passed Senate with vote

of 43 to 38 on May 15th. Adopted by House on May 21st by vote of 28 to 139 and sent to the President on May 24th. *Cong. Rec.*, April 1, 6, 9, 12, 30, May 15 and 21, 1920. Returned by the President on May 27th with veto message. *Cong. Rec.*, May 27, 1920, p. 8392. The House of Representatives on May 28th refused to pass the bill over the President's veto. *Cong. Rec.*, May 28, 1920, p. 8468.

- 1 RHINELAND HIGH COMMISSION. Ordinances and instructions of Interallied Commission published. *Cmd.* 591.
- 1 RUSSIAN COMMERCIAL MISSION. Arrived in Stockholm to negotiate mode of future commercial exchange with Scandinavian countries and the Entente Powers. *Times*, April 3, 1920, p. 9.
- 2 FRANCE—GERMANY. Regulations issued for procedure of Mixed Arbitration Tribunal, provided for in Article 304 of Treaty of Versailles. *Text J. O.*, April 20, 1920, p. 6174.
- 5 BOLIVIA—GREAT BRITAIN. Commercial treaty signed in La Paz, regarding false declarations of origin of goods shipped from one country to the other. *Commerce Reports*, June 12, 1920.
- 5 CHINESE CONSORTIUM. Japan informed State Department of its adhesion to arrangement under which bankers of United States, Great Britain, France and that country will enter a consortium for financing China. The plans contemplate a loan of \$250,000,000 to China for improvement of Chinese finances and internal works, principally railways. *N. Y. Times*, April 6, 1920, p. 22.
- 7 ALBANIA. Independence recognized by Italy. *Current History*, May, 1920, 12:248.
- 7 NICARAGUA. Ratified German Peace Treaty. *Press notice*, April 7, 1920.
- 7 ROUMANIA. Ratified German Peace Treaty. *Times*, April 17, 1920, p. 13; *Temps*, April 18, 1920, p. 1.
- 8 DANZIG (Free City). Draft of constitution summarized. *Times*, April 20, 1920, p. 11.
- 8 PORTUGAL. Ratified German Peace Treaty and put it into force. *D. G.*, April 12, 1920, p. 576; *J. O.*, April 9, 1920, p. 5622.
- 10 ESTHONIA. Requested admission to League of Nations. *Temps*, April 11, 1920, p. 1.
- 10 GREAT BRITAIN—UNITED STATES. Proclamation issued by President Wilson put into force on February 2, 1920, the new

copyright law of December 18, 1919, in our relations with Great Britain. Text *Proclamation*, No. 1560.

- 10-June 1. MEXICO. Revolution began by secession of State of Sonora, followed by secession of all but three of the Mexican States. A provisional government was established April 23d with Governor de la Huerta as Supreme Commander. President Carranza became a refugee on May 17th and was killed on May 22d. General de la Huerta summoned Congress to meet in Mexico City on May 24th, for the purpose of appointing a provisional President of Mexico. On June 1st, he took the oath of office as provisional President. *N. Y. Times*, April 11-June 1, 1920.
- 11 BOLIVIA—CHINA. Commercial treaty signed. *Temps*, April 12, 1920, p. 1.
- 11 CUBA. Government decree issued for restitution of German property sequestered during the war, with exception of German ships seized in Cuban waters. *Temps*, April 12, 1920, p. 1.
- 14 ITALY—SOVIET RUSSIA. Convention signed at Copenhagen between a representative of the Russian cooperatives and the National League of Italian cooperatives concerning commercial exchanges. Exchanges with foreign countries to be centralized in the National Institute of Credit. *Temps*, April 16, 1920, p. 4.
- 15 LITHUANIA—SOVIET RUSSIA. Peace negotiations, agreed to on April 7th, began on April 15th. Independence of Lithuania granted. *Current History*, June, 1920, 12:460; *Times*, May 24, 1920, p. 7.
- 15 MESOPOTAMIA. Mandate offered to Great Britain. *Naval Inst. Proc.*, June, 1920, p. 985.
- 16 LATVIA—SOVIET RUSSIA. Peace conference held. Summary of essential conditions of peace. *Times*, April 19, 1920, p. 11.
- 16 SOVIET RUSSIA. M. Krassin, head of Russian trade delegation at Copenhagen, declared that the Soviet Government formally refused to recognize debts contracted by the former government or the validity of concessions and industrial contracts granted to foreigners under the Tsarist régime. *Times*, April 17, 1920, p. 14. Sent telegram to Supreme Allied Council at

San Remo urging formal agreement with Allied Governments for resumption of trade with Russia and the Ukraine. *Times*, April 28, 1920, p. 16.

- 17 GERMAN SHIPS. Reparations Commission's note, regarding distribution of former German ships, received by State Department. *Press notice*, April 17, 1920.
- 17 GUATEMALA. President Cabrera deposed by National Assembly and Dr. Carlos Herrera named as President. *Current History*, May, 1920, 12: 251.
- 17 INTERNATIONAL POLICE TREATY. Text made public of a treaty submitted for approval to Governments of Argentina, Brazil, Chile, Peru, Paraguay and Uruguay, which was drawn up at a recent convention of South American police. It provides that governments concerned shall inform one another of attempted or executed anarchistic deeds tending to alteration of social order. *Nation* (N. Y.), May 1, 1920, p. 605.
- 17 WORLD SOVIET REPUBLIC. Memorandum from original Soviet sources made public by U. S. State Department showing that the creation of a "World Soviet Republic" by international revolution is the object of the Communist Party, the Third International and the Russian Soviets. *Press notice*, April 17, 1920.
- 19-26 SAN REMO CONFERENCE. Inter-Allied Conference opened on April 19 for discussion of Turkish treaty, distribution of mandates in the Near East, the settlement of German indemnity questions, and trade with Russia, etc. Germany addressed three notes to the Conference requesting increase of Reichswehr troops to 200,000 men instead of 100,000 provided for by the terms of the Treaty of Versailles. *N. Y. Times*, April 22, 1920, p. 3; *Temps*, April 23, 1920, p. 4. Allied Powers issued a declaration to Germany at the close of the conference on April 26th, in which they declined to consider Germany's demand for increased army until she had begun to carry out the terms of the treaty. An invitation was extended to the German Chancellor to meet them at Spa on May 25th to discuss the question. *N. Y. Times*, April 27, 1920, p. 2; *Times*, April 27, 1920, p. 17.

- 20 FRANCE—GERMANY. Order issued extending time of presentation of demands for maintenance of pre-war contracts to June 1, 1920. *J. O.*, April 29, 1920, p. 6474.
- 20 GERMANY—SOVIET RUSSIA. Reciprocal repatriation of remaining war prisoners agreed upon. *N. Y. Times*, April 21, 1920, p. 3.
- 20 INTERNATIONAL FINANCIAL CONFERENCE. Called by League of Nations council to meet in Brussels the last of May. Text of invitation sent to 25 states. *Temps*, April 21, 1920, p. 4; *N. Y. Times*, April 21, 1920, p. 3. Postponed until July 5th or 6th to enable Allied and German Governments to present exact exposition of financial situation. *Temps*, May 23, 1920, p. 4.
- 21 AMERICAN LEAGUE. Advocated by President Baltazar Brum of Uruguay, on basis of absolute equality between all American nations. *Evening Star*, April 22, 1920.
- 21 FRANCE—SOVIET RUSSIA. Agreement signed concerning exchange of war prisoners. *Temps*, April 26, 1920, p. 1.
- 22 DANZIG—POLAND. Provisional economic convention signed at Danzig. Summary: *Commerce Reports*, June 17, 1920.
- 22 FRANCE—GREAT BRITAIN. Agreement signed relative to disposition of German merchant ships. *Temps*, April 23, 1920, p. 6.
- 22 UKRAINE. Application made for admission to League of Nations, accompanied by statement of historical and present status of Ukrainian people. *Times*, April 22, 1920, p. 15.
- 23 ARMENIA—UNITED STATES. Republic recognized as a *de facto* government by the United States. Recognition was accorded in January by France, Great Britain and Italy. *N. Y. Times*, April 25, 1920, p. 3.
- 23 CENTRAL EUROPE. Allied and Associated and neutral Powers met in first conference at Paris to draw up program for help and reconstruction. *Times*, April 26, 1920, p. 13.
- 23 POLAND—UKRAINE. Agreement reached concerning western frontier of Ukraine. *Temps*, April 26, 1920, p. 4; *Times*, May 4, 1920, p. 16.
- 24 CHILE—GREAT BRITAIN. Battleship *Canada* and three destroyers requisitioned by England in 1914 will be repurchased by Chile on the terms proposed by England. *Times*, April 29, 1920.

- 26 FRANCE—SWITZERLAND. Swiss Federal Council sent message to the Federal Assembly regarding the mutual declaration exchanged with France on June 11th, 1914, concerning relations between Switzerland and the French zone of the Moroccan Empire. *Bundesbl.*, April 28, 1920, p. 290.
- 26 JAPAN—SOVIET RUSSIA. Negotiations concluded, with Russian concessions to Japanese demands. *Times*, May 1, 1920, p. 13.
- 26 PALESTINE. Mandate given Great Britain. *Times*, April 27, 1920, p. 17.
- 28 ICELAND. Application made for membership in League of Nations. Georgia, San Marino and Luxemburg have also applied. *N. Y. Times*, April 28, 1920, p. 2.
- 29 PACT OF LONDON. Text of agreement between France, Russia, Great Britain and Italy signed at London April 26, 1915, made public. *Cmd.* 671; *Times*, April 30, 1920, p. 16.
- 29 TURKEY. Cilician Christians, Armenians, Greeks, Syrians, Chaldeans, Assyrians, and Jacobites have made collective protest to Supreme Council against return of their territory to Turkish rule. *Times*, April 29, 1920, p. 15.

May, 1920.

- 1 SOVIET RUSSIA. A third telegram was sent by League of Nations Council asking Soviet Government's attitude toward proposal to send League commission into Russia to study question of recognizing the government of Lenin and Trotzky. No reply received. Text. *N. Y. Times*, May 6, 1920, p. 17; *Times*, May 5, 1920, p. 15. On May 19th another telegram was sent to Moscow asking consideration before June 15th of the decision to impose conditions on the investigating commission of the League, failing which the Council would leave to the Soviet Government full responsibility for rejection of an offer designed to improve economic and international relations. *Wash. Post*, May 20, 1920, p. 1.
- 2 INTERNATIONAL ECONOMIC CONGRESS. Opened its first congress in Frankfort, with delegates from Switzerland, Holland, Denmark, Sweden, Finland, Austria, Czecho-Slovakia, Italy, France, Russia, and the United States. *Temps*, May 4, 1920, p. 4.

- 4 INTERNATIONAL CONVENTION FOR THE REGULATION OF AERIAL NAVIGATION. Final text issued. *Times*, May 5, 1920, p. 17.
- 4-6 INTERPARLIAMENTARY COMMERCIAL CONFERENCE. Held by members of European parliaments in Paris for consideration of commercial and financial questions. Adopted resolutions that international agreements should be reached with a view to remedying the exchange situation. *N. Y. Times*, May 7, 1920, p. 17; *Temps*, May 9, 1920, p. 1.
- 5 GERMANY. Sent memorandum to Reparations Commission asking delay in delivery of 350,000 tons of shipping, in order to avert economic collapse in Germany. *Times*, May 6, 1920, p. 16.
- 5 PAN-AMERICAN UNION. Dr. L. S. Rowe, chief of the Latin-American Division of the State Department, elected director-general, succeeding John Barrett, resigned. *Wash. Post*, May 6, 1920, p. 2.
- 6 FRANCE—ITALY. Reciprocal agreement concluded whereby Italian laborers are to be sent to French coal fields on condition that half the coal they produce shall be sold to Italy. Same principle is to be applied to iron ore and potash. *Times*, May 8, 1920, p. 15.
- 7 GERMAN COLONIES. Official communique issued by Supreme Council stated disposition of former German colonies. *Covenant*, April, 1920, p. 415.
- 7 SOVIET RUSSIA—TURKEY. Military convention said to have been concluded between Soviet Government of Russia and Turkish Nationalist organization. Summary of articles: *Times*, May 10, 1920, p. 12.
- 8 BELGIUM—NETHERLANDS. Exchange of ratifications of agreement concerning telegraphic relations, to go into effect May 15th. *Monit.*, May 14-15, 1920, p. 3741; *Staats.*, May 12, 1920, p. 1.
- 9 GEORGIA—SOVIET RUSSIA. Peace Treaty concluded, providing recognition of independence of Georgia, and non-interference by Russia in Georgia's international affairs. *Evening Star*, May 10, 1920.
- 10 CANADA—UNITED STATES. British Embassy announced that Canada would be represented in Washington by a resident minister, appointed by the King, who would assume charge of all imperial diplomatic relations with the United States in

- the absence of the British Ambassador. *Current History*, June, 1920, 12: 544.
- 11 FRANCE—GERMANY. Announcement made regarding location of office of Franco-German Arbitration Tribunal, hours of opening, form of requests, etc. *J. O.*, May 11, 1920, p. 7128.
 - 11 GERMAN WAR CRIMINALS. New note concerning names of 45 accused persons presented to Germany, omitted the names of the ex-Crown Prince, Von Hindenburg and Ludendorff. *Wash. Post*, May 12, 1920, p. 1.
 - 13 SECRET TREATIES. Publication provided for in "League of Nations Journal," according to plans of the Secretary-General of the League. *N. Y. Times*, May 13, 1920, p. 6.
 - 14 FINLAND—SOVIET RUSSIA. Russia offered to enter into negotiations with Finland with a view to concluding peace. *Temps*, May 15, 1920, p. 4.
 - 14 THIRD INTERNATIONAL (Moscow). Adhered to by Socialist National Convention in New York. Dictatorship of the proletariat opposed. *N. Y. Times*, May 15, 1920, p. 3.
 - 15 FIUME LEAGUE CONFERENCE. Invitation issued by Gabriele d'Annunzio for conference at Fiume on May 15th to establish a League of Fiume, to include all peoples which Peace Conference put under the heel of other races. *Nation* (N. Y.), May 1, 1920, p. 605.
 - 15 HYTHE CONFERENCE. Discussion of French and English Premiers regarding German indemnity and method of liquidation of debts of Allies to one another. *Current History*, June, 1920, 12: 383. Text of declaration issued at close of conference: *Temps*, May 17, 1920, p. 4.
 - 15 INTERNATIONAL RÉGIME OF RIVERS. Walker D. Hines appointed by President Wilson at request of Allies to arbitrate questions affecting navigation on Danube, Oder, Elbe, and other European rivers. Details of work made public. *Evening Star*, May 16, 1920.
 - 16 SIBERIA—SOVIET RUSSIA. Republic of Siberia recognized by Soviet Government. *N. Y. Times*, May 19, 1920, p. 17.
 - 18 LEAGUE OF NATIONS. Council of the League sent a message to President Wilson requesting him to convoke the League of Nations next November at Brussels. *N. Y. Times*, May 19, 1920, p. 11.

- 19 LEAGUE OF NATIONS. Advisory commission for military, naval and aerial matters has been created by League which will probably meet in London in June. *Press notice*, May 19, 1920.
- 20 GERMANY. First National Constitutional Assembly under the Republic, elected in January, 1919, adjourned. *Temps*, May 21, 1920, p. 4.
- 20 PERSIA—SOVIET RUSSIA. Soviet Commissary for Foreign Affairs sent note to Persian Government accepting offer to dispatch a mission to Russia and to resume diplomatic relations. *N. Y. Times*, May 23, 1920, p. 4.
- 21 PERSIA. Appealed to the League of Nations for protection against bolshevik aggression, following landing of bolshevik forces on Persian soil. Text: *Times*, May 29, 1920, p. 13.
- 21 VERKHNI UDINSK. New buffer state, consisting of all the territories east of Lake Baikal, including Kamchatka and Sakhalien, proclaimed. *N. Y. Times*, May 22, 1920, p. 3.
- 22 CHINA—JAPAN. China sent note to Japan on May 23d refusing to agree to Japan's proposal to negotiate a Shantung settlement, or to recognize the Versailles Treaty. *Times*, May 25, 1920, p. 9.
- 22 CZECHO-SLOVAKIA—GERMANY. Agreement concluded for an exchange of sugar from Czecho-Slovakia for wagons from Germany. *Temps*, May 23, 1920, p. 4.
- 22 GUATEMALA—UNITED STATES. International gold clearance fund convention ratified by executive decree. *Guatemalteco*, May 24, 1920, p. 1.
- 22 INTERNATIONAL ANTI-SLAVERY LEAGUE. Organized at Geneva for purpose of defending rights of natives or subject peoples before the League of Nations and the court of public opinion. Data will be gathered regarding peonage in South and Central America, the coolie system in Asia and forced labor of natives in Africa. *Evening Star*, May 23, 1920.
- 24 FRANCE—UNITED STATES. Note sent from U. S. State Department to French Government on the world oil crisis. *Evening Star*, May 24, 1920.
- 24 JUGOSLAVIA—HUNGARY. Yugoslavia notified State Department of intention to concentrate troops on Yugoslav-Hungarian border should Hungary fail to observe terms of treaty. *N. Y. Times*, May 25, 1920, p. 17.

- 25 CANADA—UNITED STATES. Treaty for protection of salmon of Frazier River system signed at Department of State. *Press notice*, May 25, 1920.
- 25 INTERNATIONAL CONGRESS OF PEACE SOCIETIES. Met at Basle for the first time since 1914, representatives of societies in England, France, United States, Germany, Austria, Italy, Belgium, Holland and Switzerland being present. The purpose of the meeting was to reorganize the international pacifist movement and to consider the League of Nations question. *N. Y. Times*, May 26, 1920, p. 2.
- 25 SPA CONFERENCE. Allies at San Remo conference invited Germany to send a representative to meet Allies on May 25th. *Temps*, April 27, 1920, p. 4. Proposal sent to Germany on May 22d to postpone date until June 21st. *Times*, May 26, 1920, p. 12.
- 26 AUSTRIAN PEACE TREATY, St. Germain, Sept. 10, 1919. Ratified by French Chamber of Deputies. *N. Y. Times*, May 27, 1920, p. 17.
- 26 BRAZIL—CZECHO-SLOVAKIA. Government of Czecho-Slovakia recognized by Brazil. *D. O.*, May 29, 1920.
- 26 BRAZIL—FINLAND. Government of Finland recognized by Brazil. *D. O.*, May 29, 1920.
- 26 BRAZIL—POLAND. Executive decree published in which Brazil recognized the Republic of Poland. *Press notice*, May 28, 1920.
- 26 DANZIG—POLAND. First of a series of treaty negotiations was held at Danzig in connection with Art. 104 of the Peace Treaty. *Times*, May 28, 1920, p. 11.
- 26 ECUADOR—UNITED STATES. International gold clearance fund convention signed. *Wash. Post*, May 27, 1920, p. 6.
- 27 INTERNATIONAL CONFERENCE ON HYDROGRAPHY. Report of meeting held in London, June 24, 1919, made public. All the Powers, except Germany, Austria, Russia and Turkey were represented. A permanent hydrographic bureau was urged by the conference and fifteen of the Powers have accepted the proposal. Summary of report: *Times*, May 27 and 29, 1920.
- 27 INTERNATIONAL LAW ASSOCIATION. Held 29th conference at Portsmouth, England. *Times*, May 17 and 31, 1920.
- 29 AUSTRIA—CHINA. Chinese Chamber of Representatives ratified Austrian Peace Treaty by vote of 203 to 1. *Temps*, May 29, 1920, p. 1.

INTERNATIONAL CONVENTIONS

Adhesions and Ratifications

AERIAL NAVIGATION. Paris, Oct. 13, 1919.

Ratification:

Portugal. April 15, 1920. *D. G.*, April 15, 1920, Ser. I, p. 590.

Signed (with reservations):

United States. May 31, 1920. *N. Y. Times*, June 2, 1920, p. 17.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908.

Adhesion:

Poland. Jan. 28, 1920. *Monit.*, April 15, 1920, p. 2848.

Protocol, March 20, 1914.

Ratification:

Norway. Feb. 28, 1920. *J. O.*, April 23, 1920, p. 6286.

Sweden. Jan. 1, 1920. *G. B. Treaty Series*, 1919, No. 13 (*Cmd.* 452).

CUSTOMS TARIFFS PUBLICATION. Brussels, July 5, 1890.

Adhesion:

Czecho-Slovak Republic. May 2, 1920. *Monit.*, May 2-4, 1920, p. 3371.

GENEVA CONVENTION, AUG. 22, 1864. REVISIONS.

Adhesion:

Haiti. Dec. 1, 1919. *P. A. U.*, March, 1920, 50:346.

LETTERS, ETC., OF DECLARED VALUE. Rome, May 26, 1906.

Adhesion:

Iceland. Jan. 22, 1920. *Monit.*, Jan. 23, 1920, p. 606.

MONEY ORDERS. Rome, May 26, 1906.

Adhesion:

Iceland. Jan. 22 (!), 1920. *Monit.*, Jan. 23, 1920, p. 606.

PARCEL POST. Rome, May 26, 1906.

Adhesion:

Iceland. Jan. 22 (!), 1920. *Monit.*, Jan. 23, 1920, p. 606.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Rome, May 26, 1906.

Adhesion:

Finland. Feb. 27, 1920. *D. G.*, April 21, 1920, Ser. I, p. 612.

PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.

Adhesion:

Union of South Africa. April 15, 1920. *Monit.*, May 9, 1920, p. 3607.

"SERVICE DES RECouvreMENTS." Rome, May 26, 1906.

Adhesion:

Iceland. Jan. 22 (†), 1920. *Monit.*, Jan. 23, 1920, p. 606.

TELEGRAPH. St. Petersburg, July 22, 1875. Revised, July 22, 1896.

Supplement, Lisbon, June 11, 1908.

Adhesion:

Czecho-Slovak Republic. Jan. 10, 1920. *D. G.*, Feb. 12, 1920, Ser. I, p. 269.

TRADE-MARKS CONVENTION. Buenos Aires, Aug. 20, 1910.

Ratification:

Peru. April 14, 1920. *Press notice*, April 22, 1920.

UNIVERSAL POSTAL UNION. Rome, May 26, 1906.

Adhesion:

Iceland. Jan. 22 (†), 1920. *Monit.*, Jan. 23, 1920, p. 606.

Finland. April 15 (†), 1920. *J. O.*, April 15, 1920, p. 5986.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Sweden. April 10, 1920. *J. O.*, May 21, 1920, p. 7570.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL
LAW

GREAT BRITAIN ¹

Aliens Order, March 25, 1920. (St. R. & O. 1920, No. 558.) 4d.

———. Directions as to custody in connection with deportation orders, March 29, 1920. (St. R. & O. 1920, No. 488.) 2d.

Aliens restriction (amendment). 9 and 10 Geo. V. Ch. 92. 3d.

Arbitration conventions between the United Kingdom and Norway and Portugal, renewal of the. (Treaty series, 1920, No. 4.) 2d.

Belgian nationality law, Oct. 25, 1919. (Misc. No. 4, 1920.) 1½d.

Belgium, neutrality of. *Foreign Office*. 7d.

Belgian refugees. Report on the work undertaken by the British Government in the reception and care of. *Ministry of Health*. 1s. 8d.

Bulgaria. Treaty of peace between the Allied and Associated Powers and Bulgaria, and protocol. Signed, Nov. 27, 1919. (With map.) (Treaty series, 1920, No. 5.) 1s. 6½d.

China. Treaty of Peace Order in Council, Dec. 9, 1919. (St. R. & O. 1919, No. 2024.) 1½d.

Copyright. Order in Council, Feb. 9, 1920, further regulating copyright relations with the United States of America as regards works first published between Aug. 1, 1914, and the termination of the war. (St. R. & O. 1920, No. 257.) 1½d.

———. Order in Council, Nov. 25, 1919, amending order of June 24, 1912, regulating copyright relations with foreign countries of the Berne Copyright Union as regards Sweden. (St. R. & O. 1919, No. 1891.) 1½d.

East Africa. Agreement between United Kingdom and Belgium respecting boundaries in. Signed Feb. 3, 1915. (With maps.) (Treaty series, 1920, No. 2.) 4s. 5½d.

Economic conditions in Central Europe. (With maps.) Pt. I, Misc. 1920, No. 1, 3d; Pt. II, Misc. 1920, No. 6, 1s. 2½d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Economic conditions of the world. Declaration by the Supreme Council of the Peace Conference. (Cmd. 646.) 2d.

Egypt. Treaty of Peace Order in Council, Jan. 22, 1920. (St. R. & O. 1920, No. 190.) 1½d.

Freedom of the seas, historically treated. *Foreign Office*. 3s. 8d.

Greece and Bulgaria. Convention signed Nov. 27, 1919. (Misc. No. 3, 1920.) 2d.

Holland. Handbook prepared under direction of historical section. *Foreign Office*. 2s. 1½d.

International Labor Conference. Draft conventions and recommendations adopted at its first meeting, Oct. 29–Nov., 1919. (French and English texts.) (Cmd. 627.) 7½d.

Italian reparation payments. Declaration modifying the agreement of Sept. 10, 1919, between the Allied and Associated Powers with regard to the. Signed at Paris, Dec. 8, 1919. (Treaty series, 1920, No. 9.) 1½d.

Italy. Agreement between France, Russia, Great Britain and. Signed at London, April 26, 1915. (Misc. No. 7, 1920.) 2d.

Liberation of territories of former Austro-Hungarian Monarchy. Declaration modifying agreement of Sept. 10, 1919, between the Allied and Associated Powers with regard to contributions to cost of. Signed Dec. 8, 1919. (Treaty series, 1920, No. 7.) 1½d.

Merchant shipping. Order in Council, Dec. 9, 1919, further postponing the coming into operation of the Merchant Shipping Convention Act, 1914, until July 1, 1920. (St. R. & O. 1920, No. 2042.) 1½d.

Patents, designs and trade-marks. Order in Council, Nov. 25, 1919, applying the provisions of Sec. 91 of the Patents and Designs Act, 1907, to Poland. (St. R. & O. 1919, No. 1900.) 1½d.

———. Order in Council, March 11, 1920, applying the provisions of Sec. 91 of the Patents and Designs Act, 1907, to Czecho-Slovakia. (St. R. & O. 1920, No. 575.) 1½d.

Peace Commission. Treaty between the United Kingdom and Chile for the establishment of a. Signed at Santiago, March 28, 1919. (Treaty series, 1920, No. 3.) 1½d.

Peace handbooks prepared under direction of the Historical Section of the Foreign Office:

Vol. I. No. 1. Foreign policy of Austria-Hungary. 2s. 8d.

No. 2. Bohemia and Moravia. 2s. 8d.

- Vol. I. No. 3. Slovakia. 1s. 1½d.
 No. 4. Austrian Silesia. 1s. 1½d.
 No. 5. Bukovina. 1s. 1½d.
 No. 6. Transylvania and the Banat. 2s. 1½d.
 No. 7. Hungarian Ruthenia. 7d.

- Vol. II. No. 8. Croatia-Slavonia and Fiume. 2s. 2d.
 No. 9. Carniola, Carinthia and Styria. 1s. 7½d.
 No. 10. The Austrian littoral. 2s. 2d.
 No. 11. Dalmatia. 2s. 2d.
 No. 12. Bosnia and Herzegovina. 2s. 2d.
 No. 13. The Slovenes. 7d.
 No. 14. The Jugo-Slav movement. 1s. 1½d.

- Vol. V. No. 26. Belgium. 5s. 3d.
 No. 27. Luxemburg and Limburg. 1s. 7½d.

Prisoners, exchange of. Treaty between His Majesty's Government and the Soviet Government of Russia. (Russia, No. 1, 1920.) 1½d.

Rhineland. Ordinances and instructions issued by the Inter-Allied Rhineland High Commission. With annexes. (Germany, No. 1, 1920.) 8d.

Roumania. Treaty between the principal Allied and Associated Powers and. Signed at Paris, Dec. 9, 1919. (Treaty series, 1920, No. 6.) 2d.

Serb-Croat-Slovene State. Declaration of accession to treaty of peace with Austria, the treaty between principal Allied and Associated Powers and the Serb-Croat-Slovene State; and the agreements with regard to the Italian reparation payments and the contributions to the cost of liberation of the territories of the former Austro-Hungarian Monarchy. Signed in Paris, Dec. 5, 1919. (Treaty series, 1920, No. 8.) 1½d.

Scheldt, Question of the. *Foreign Office*. 7d.

Supreme Economic Council. Monthly bulletin of statistics. No. 8 (figures to Feb. 10, 1920); No. 9 (figures to Mar. 10, 1920.) 1s. 1½d.

Treaties of peace (Austria and Bulgaria) bill, 1920. Note on. (Misc. No. 5, 1920.) 1½d.

Treaty series, 1919. Index to. (Treaty series, 1919, No. 21.) 1½d.

Versailles, Treaty of, 1919. Treaty of peace between Allied and

Associated Powers and Germany, June 28, 1919, index to the. (Treaty series, 1920, No. 1.) 8d.

———. Treaty of peace between the Allied and Associated Powers and Germany, the protocol annexed thereto, the agreement respecting the military occupation of the territories of the Rhine, and treaty between France and Great Britain respecting assistance to France in event of unprovoked aggression by Germany. June 28, 1919. (With maps.) *Foreign Office*. 21s. 9d.

World War, termination of the. Order in Council, Feb. 9, 1920, determining date of. (St. R. & O. 1920, No. 264.) 1½d.

UNITED STATES ²

Actions at law. Act relating to maintenance of actions for death on high seas and other navigable waters. Approved March 30, 1920. 1 p. (Public 165.) 5c.

Admiralty. Act authorizing suits against United States in admiralty, suits for salvage services, and providing for release of merchant vessels belonging to United States from arrest and attachment in foreign jurisdictions. Approved March 9, 1920. 4 p. (Public 156.) 5c.

Adriatic question. Joint memo. of Dec. 9, 1919, British-French revised proposals of Jan. 14, 1920, statement of French and British ministers of Jan. 23, 1920, President Wilson's note of Feb. 10, 1920, reply of French and British Prime Ministers of Feb. 17, 1920, and President Wilson's note of Feb. 24, 1920. 26 p. (S. doc. 237.) *Senate*.

Alien enemies. Executive order authorizing departure of, for European ports. Feb. 20, 1920. 1 p. (No. 3231.) *State Department*.

Alien property. Executive order concerning sale and conveyance of certain choses in action and rights, interests and benefits under certain agreements, determined to belong to, or to be held for, by, on account of, or on behalf of, or for benefit of persons determined to be enemies, not holding license or licenses granted by the President within purview of trading with the enemy act and amendments thereof. Feb. 13, 1920. 2 p. (No. 3227.) *State Department*.

² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Aliens. Hearing on bill to deport aliens who surrendered their first papers in order to escape military service. Nov. 7, 1919. Pt. 4, 53-87 p. *Immigration and Naturalization Committee*.

Amnesty to prisoners since the armistice. Communications showing action of Great Britain, France, Italy, and Belgium. March 1 and 11, 1920. 26 p. and 3 p. (S. docs. 241 and 249.) *State Dept.*; action of Italy, communication of March 25, 1920, 30 p. (S. doc. 249, Pt. 2.) *State Department*.

Arbitration agreement between Italy and United States. Agreement further extending duration of convention of 1908. Signed Mar. 20, 1919, 4 p. (Treaty series, 645.) *State Department*.

Arbitration convention between Spain and United States. Agreement further extending duration of convention of 1908. Signed March 8, 1919. (Treaty series, 644.) *State Department*.

Armenia. Report of American military mission to Armenia by Maj. Gen. James G. Harbord. 44 p. (S. doc. 266.) *Senate*.

Birds. Communication submitting statement in regard to conventions or treaties with republics of Mexico and of Central and South America for protection of migratory birds. March 22, 1920, 2 p. (S. doc. 259.) *State Department*.

Bolshevism. Red radicalism as described by its own leaders, exhibits collected by Attorney General Palmer, including various communist manifestoes, constitutions, plans, and purposes of proletariat revolution and its seditious propaganda. 1920. 83 p. *Justice Department*.

———. Letter transmitting to Senate Committee on Foreign Relations memorandum on certain aspects of Bolshevik movement in Russia. 1920. 55 p. (S. doc. 172.) *State Department*.

Commercial travelers. Convention between Panama and United States to facilitate work of. Signed Feb. 8, 1919. 7 p. (Treaty series, 646.) *State Department*.

Communist and anarchist deportation cases. Hearings before subcommittee, April 21-24, 1920. 158 p. *Immigration and Naturalization Committee*.

Consuls. Digest of circular instructions to consular officers. Reprint, 1920. 53 p. *State Department*.

Copyright. Proclamation extending benefits of Act of March 4, 1909, to Great Britain. April 10, 1920. 3 p. (No. 1560.) *State Department*.

Copyright. Proclamation extending benefits of Act of March 4, 1909, to citizens of Sweden. Feb. 27, 1920. 1 p. (No. 1557.) *State Department*.

Diplomatic and consular appropriation bill. Hearings Jan. 7-15, 1920. 260 p.; report to accompany bill, Jan. 21, 1920. 15 p. (H. rp. 571.) *Foreign Affairs Committee*. Hearings, 1920, 41 p. *Foreign Relations Committee*.

Diplomatic and consular service of United States; corrected to Dec. 31, 1919. 57 p. *State Department*.

Foreign relations of United States. List of publications for sale by Supt. of Documents. Oct., 1919. 50 p. (Price list 65, 4th ed.) *Government Printing Office*.

Foreign trade. Report on Federal Government activities on promotion of. 1920. 88 p. (H. doc. 650.) *Efficiency Bureau*.

Germany. Information regarding status of American military forces now stationed in German territory, message of President transmitting. April 1, 1920. 2 p. (H. doc. 709.) *State Department*.

———. Termination of state of war with. Report to accompany joint resolution. April 6, 1920. 3 p. (H. rp. 801, Pt. 1); minority views, April 7, 1920, 19 p. (H. rp. 801, Pt. 2.) *Foreign Affairs Committee*.

International High Commission. Address on work of, delivered by John Bassett Moore at Pan-American Financial Congress, Washington, Jan. 19-24, 1920. 9 p. (S. doc. 261.) *Senate*.

Ireland. Hearings on bill to provide for salaries of minister and consuls to Republic of Ireland. 361 p. *Foreign Affairs Committee*.

Japanese in Hawaii. Hearing on bill to amend act of Feb. 5, 1917, to regulate immigration of aliens to and residence of aliens in United States. 1920. 42 p. *Immigration Committee*.

Jews. Report on actual conditions in the Ukraine with respect to treatment of members of Jewish race. Jan. 12, 1920. 3 p. (S. doc. 176.) *State Department*.

Pan-American Financial Congress, Second, Washington, D. C., Jan. 19-24, 1920. List of official delegations, guests and special representatives, and members of group committees, schedule of sessions, etc., 1st ed. 1920. 56 p.; same in Spanish, 59 p. *Pan-American Union*.

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———. Hearings on bill to prohibit and punish certain seditious acts against Government of United States. 1920. 203 p. *Rules Committee*.

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GEO. A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

MISSOURI *v.* B. P. HOLLAND

Supreme Court of the United States

[April 19, 1920]

Mr. Justice Holmes delivered the opinion of the court.

This is a bill in equity brought by the State of Missouri to prevent a game warden of the United States from attempting to enforce the Migratory Bird Treaty Act of July 3, 1918, c. 128, 40 Stat. 755, and the regulations made by the Secretary of Agriculture in pursuance of the same. The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the Tenth Amendment, and that the acts of the defendant done and threatened under that authority invade the sovereign right of the State and contravene its will manifested in statutes. The State also alleges a pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the Government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State. *Kansas v. Colorado*, 185, U. S. 125, 142. *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237. *Marshall Dental Manufacturing Co. v. Iowa*, 226 U. S. 460, 462. A motion to dismiss was sustained by the District Court on the ground that the Act of Congress is constitutional. 258 Fed. Rep. 479. *Acc. United States v. Thompson*, 258 Fed. Rep. 257; *United States v. Rockefeller*, 260 Fed. Rep. 346. The State appeals.

On December 8, 1916, a treaty between the United States and Great Britain was proclaimed by the President. It recited that many species of birds in their annual migrations traversed many parts of the United States and of Canada, that they were of great value as a source of food and in destroying insects injurious to vegetation, but were in danger of extermination through lack of adequate pro-

tection. It therefore provided for specified close seasons and protection in other forms, and agreed that the two Powers would take or propose to their lawmaking bodies the necessary measures for carrying the treaty out. 39 Stat. 1702. The above-mentioned act of July 3, 1918, entitled an act to give effect to the convention, prohibited the killing, capturing or selling any of the migratory birds included in the terms of the treaty except as permitted by regulations compatible with those terms, to be made by the Secretary of Agriculture. Regulations were proclaimed on July 31 and October 25, 1918. 40 Stat. 1812; 1863. It is unnecessary to go into any details, because, as we have said, the question raised is the general one whether the treaty and statute are void as an interference with the rights reserved to the States.

To answer this question it is not enough to refer to the Tenth Amendment, reserving the powers not delegated to the United States, because by Article II, Section 2, the power to make treaties is delegated expressly, and by Article VI treaties made under the authority of the United States, along with the Constitution and laws of the United States made in pursuance thereof, are declared the supreme law of the land. If the treaty is valid there can be no dispute about the validity of the statute under Article I, Section 8, as a necessary and proper means to execute the powers of the Government. The language of the Constitution as to the supremacy of treaties being general, the question before us is narrowed to an inquiry into the ground upon which the present supposed exception is placed.

It is said that a treaty cannot be valid if it infringes the Constitution, that there are limits, therefore, to the treaty-making power, and that one such limit is that what an act of Congress could not do unaided, in derogation of the powers reserved to the States, a treaty cannot do. An earlier act of Congress that attempted by itself and not in pursuance of a treaty to regulate the killing of migratory birds within the States had been held bad in the District Court. *United States v. Shauver*, 214 Fed. Rep. 154. *United States v. McCullagh*, 221 Fed. Rep. 285. Those decisions were supported by arguments that migratory birds were owned by the States in their sovereign capacity for the benefit of their people, and that under cases like *Geer v. Connecticut*, 161 U. S. 19, this control was one that Congress had no power to displace. The same argument is supposed to apply now with equal force.

Whether the two cases cited were decided rightly or not they cannot be accepted as a test of the treaty power. Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, "a power which must belong to and somewhere reside in every civilized government," is not to be found. *Andrews v. Andrews*, 188 U. S. 14, 33. What was said in that case with regard to the powers of the States applies with equal force to the powers of the nation in cases where the States individually are incompetent to act. We are not yet discussing the particular case before us but only are considering the validity of the test proposed. With regard to that we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they have created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago. The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment. We must consider what this country has become in deciding what that amendment has reserved.

The State as we have intimated founds its claim of exclusive authority upon an assertion of title to migratory birds, an assertion that is embodied in statute. No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale

of such birds, but it does not follow that its authority is exclusive of paramount powers. To put the claim of the State upon title is to lean upon a slender reed. Wild birds are not in the possession of anyone; and possession is the beginning of ownership. The whole foundation of the State's rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State and in a week a thousand miles away. If we are to be accurate we cannot put the case of the State upon higher ground than that the treaty deals with creatures that for the moment are within the State borders, that it must be carried out by officers of the United States within the same territory, and that but for the treaty the State would be free to regulate this subject itself.

As most of the laws of the United States are carried out within the States and as many of them deal with matters which in the silence of such laws the State might regulate, such general grounds are not enough to support Missouri's claim. Valid treaties of course "are as binding within the territorial limits of the States as they are effective throughout the dominion of the United States." *Baldwin v. Franks*, 120 U. S. 678, 683. No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power. We do not have to invoke the later developments of constitutional law for this proposition; it was recognized as early as *Hopkins v. Bell*, 3 Cranch. 454, with regard to statutes of limitation, and even earlier, as to confiscation, in *Ware v. Hylton*, 3 Dall. 199. It was assumed by Chief Justice Marshall with regard to the escheat of land to the State in *Chirac v. Chirac*, 2 Wheaton, 259, 275. *Hauenstein v. Lynham*, 100 U. S. 483. *Geoffroy v. Riggs*, 133 U. S. 258. *Blythe v. Hinckley*, 180 U. S. 333, 340. So as to a limited jurisdiction of foreign consuls within a State. *Wildenhus' Case*, 120 U. S. 1. See *Ross v. McIntyre*, 140 U. S. 453. Further illustration seems unnecessary, and it only remains to consider the application of established rules to the present case.

Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another Power. The subject-matter is only transitorily within the State and has no permanent habitat therein. But for the treaty and the statute there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of

our forests and our crops are destroyed. It is not sufficient to rely upon the States. The reliance is vain, and were it otherwise, the question is whether the United States is forbidden to act. We are of the opinion that the treaty and statute must be upheld. *Cary v. South Dakota*, 250 U. S. 118.

Decree affirmed.

Mr. Justice Van Devanter and Mr. Justice Pitney dissent.

BOOK REVIEWS¹

Present Problems in Foreign Policy. By David Jayne Hill. New York: D. Appleton & Co. 1920. pp. 361. \$1.50 net.

This is a volume of essays upon subjects of international importance, most of which now interest the statesmen of the world especially from the point of view of each of the participants in the Great War; they tend largely in the direction of a unity of purpose as well as a community of organized effort amongst all nations to secure that political and commercial harmony which shall become the basis of a lasting peace.

The collection of seven or eight papers which the author has subdivided here into that many chapters of his book is made up of articles published heretofore by him in *The North American Review*, or of addresses delivered upon appropriate occasions before the George Washington University. Their most important headings, as, for instance: "The Entente of Free Nations," "The Obstruction of Peace," "The Corporate Character of the League of Nations," "The Treaty-Making Power under the Constitution of the United States," "The President's Challenge to the Senate," sufficiently indicate the character of the material of which they are composed and show the wide range of the discussions incidental to them; to which, it may be said at the outset, Dr. Hill has devoted a ripened scholarship as well as a mature judgment derived from long experience in these matters.

Indeed, there are few Americans of today whose career in public life has brought them more closely into contact with the foreign relations of the United States, or with questions of international law in general. For as Assistant Secretary of State, as Minister Plenipotentiary and Ambassador, his intimate acquaintance with the actual practice in intercourse between the great Powers abroad gives him the right to speak with authority where these legal and political

¹ The JOURNAL assumes no responsibility for statements made or views expressed in signed book reviews.—ED.

questions are concerned. We should say that, amongst the strongest impressions which one obtains from the careful reading of his essays is perhaps that of the tranquillity and fairness with which Dr. Hill approaches the consideration of these questions, many of which have frequently become, and are even now, the sources of violent disagreement or acrimonious debate.

This does not mean, of course, that he has not made up his mind or that he has no decided opinion in regard to them; for, on the contrary, he gives evidence of an exceedingly definite and very conclusive opinion, at which he has arrived after deliberate consideration and reasoning and into the course of which he invites the reader or student to follow as he proceeds with the development of his theme. This is especially true in regard to his treatment of the League of Nations.

Every international lawyer and statesman whose contact with colleagues or opponents in the establishment of mutual friendly relations between the peoples of different countries, or the composure of disputes arising from diversity of traditions or of purpose, has learned that sentiment is not to be looked upon as a determining factor in examining or treating international questions; because these, like any other negotiations in the political or commercial world, are to be met and disposed of by arrangements which, whilst avoiding conflict, shall ultimately safeguard the aims and interests of the parties most directly concerned.

Consequently each takes in such matters, as it is natural that he should, the point of view which most nearly coincides with the principle of administration and the attainment of the national purposes of his countrymen where these meet and touch, or are in any wise brought within the range of the public interests of other people. Dr. Hill's attitude is consistently American, as we should expect it to be, and always within the limits of his just and complete rights. We sympathize and agree with him when he says, for example, in speaking of the plan proposed for a League of Nations: "We do not wish to be misunderstood in Europe by the representation that we went into this war with the purpose, or for the end of creating a League of Nations. We have not, as a people, studied the project. We do not even know what it is. Of one thing some of us are sure, we do not wish or intend to be bound in the dark or to be controlled by abstract terms that would make us shrink from keeping our obliga-

tions in a concrete way; and we know that nothing is more illusive than the requirements of a treaty, unless it is very precise and treats of matters clearly and definitely known. And," he continues, "it must be emphasized that no one Power can expect, or should desire, to impose upon others a system of which they do not all heartily approve; for, if any plan is to be permanent and effective it must have the support not only of the leading governments but of the masses of the people whom these governments represent."

He gives us a very timely warning in this regard, which ought to be, and is, of value to the reflecting portion of the population of this country before whom the precise question of the approval by the United States of such a league is likely to become one of the foremost elements of conflict in the approaching Presidential campaign, in which each citizen is to determine for himself whether he will take sides in favor of it or not. Any one who wishes to obtain a judicial statement of the case may find it in Dr. Hill's chapter entitled: "The Entente of Free Nations," which it will be profitable for him to read.

Without undertaking to analyze the peculiar forms proposed for an international constitution, as the fundamental law regulating the legislative, judicial and executive powers of such an international government—which will control the governments of the nations that subscribe to it—Dr. Hill points out that: "to possess any efficiency these powers must detract in large degree from the powers of the national governments and involve a considerable sacrifice of their sovereignty. Every scheme for a League of Nations requires this surrender in some degree, for every such league creates in some form a supernational body of control to which the members agree to submit. Membership in such a league, of necessity, implies the renunciation of any independent foreign policy."

All this is of the first importance to America. It ought to be brought home to the mind of every American citizen that schemes of this kind cannot add anything possible to the dignity or the authority of the United States amongst the nations of the world, but that the absolute and inevitable result would be, to yield into the hands of other people whose interests are not identical with our own the solution of national or international questions which the judgment of the American people is strong enough and wise enough to decide for itself, and to permit interference by foreigners in the management

of our domestic affairs which would be an intolerable encroachment upon American independence.

Now is the time to understand and reflect upon these things. Assuredly the people of the United States are a peace-loving nation. They have not the nature to seek aggressive war, or any war; their ambition has always been, to right wrongs and to establish justice in the world; they fulfil scrupulously any international obligation that they have ever entered into, and they will continue to do so. But, it is still true, as Thomas Jefferson once said, in the turmoil and conflict of his day: a way must be found "which will reconcile our faith and honor with peace."

This evidently is not what Dr. Hill considers likely to be accomplished by the "Covenant" prepared at the conference in Paris, which he refers to as being not the formation of a universal Society of States such as is contemplated by international law, but a creation of a predominant group within this more general association. It is, he says, a distinct corporate entity, "exercising a will not identical with that of all the separate members, organized with power to coerce other States not belonging to it, to act under its own rules and by its own judgment, and even to dictate the form of government and degree of authority to be exercised over wide areas and great populations subject to its control."

Nothing, certainly, could be farther from the spirit of the American Constitution than the form of control thus conceived, nor could any one imagine the people of this country becoming a participant in a league which our author describes as a covenant which "creates a new legal person, acting by itself and in accordance with rules to be adopted by itself. It creates a body, at first called the Executive Council, which, in turn chooses and directs its own organs of action, defines their rights and duties and confers new authority upon them. It creates obligations on the part of the nations composing the league which these nations owe not to one another but to the league, as a distinct and separate legal person, who can call them to account for non-performance of duty and inflict punishment upon them. It attributes to the league, as a corporate entity, powers which the separate States do not, either singly or in combination, themselves possess." An *imperium*, he says, over States not belonging to the league which is empowered to coerce and punish them for not submitting to its decisions.

"But," declares Dr. Hill in summing up the character of the League of Nations, "Imperialism is imperialism, whether it be joint or single, and it is not a business that tends toward democracy or toward justice;" and one is inclined to wonder whether he has not in mind two famous voyages to France, now recorded in modern history, when he adds: "Even in its purity and its best state it is a dangerous enterprise for a free people to engage in, and it is more dangerous than ever when innocence and good intention become the partners of seasoned experience in a game for power."

Very interesting chapters of the book are those entitled: "The Obstruction of Peace" and "The President's Challenge to the Senate," in both of which there is presented a carefully reasoned argument based upon the unwillingness of the President even to admit criticism of his aims and purposes or interference with his determined will to carry through in his own way what he had it in his own mind to do. He obstructed in that manner, declares our author, the re-establishment of peace, whilst by his attitude toward the Senate he virtually informed thirty-nine Senators, elected by the people, representing more than two-thirds of the population of the United States, that the advice and consent of the Senate would receive no consideration. They might, if they chose, privately regard the League of Nations as a defiance of their judgment and even a violation of the fundamental law of the republic, but they would find themselves in a position in which they would have to accept this document as it had been formulated, or they would be compelled to bear the odium of preventing the conclusion of peace, because the League of Nations would be an essential part of the peace treaty.

Upon this point Dr. Hill has expressed himself in as precise terms, and with as strong a determination as in any other part of his book. His conclusion is that: "It is not necessary to dwell upon this defiance of the constitutional division of the treaty-making power and of the purpose with which that division was originally made and should always be maintained. This defiance assumed what every autocratic usurpation of authority assumes, namely, that power could be invoked to sustain it. In this case it would no doubt be an attempt, in the nominal interest of peace, to bring political pressure to bear upon refractory Senators in order to compel them to yield to a superior will. It requires no reflection to perceive that if this were done and were successful, it would mark the extinction of

representative and even of constitutional government in the United States. That it was ever even contemplated indicates a departure from the principles on which our government is based, which should awaken a deep concern for the future and call attention to the perils of autocratic as distinguished from representative democracy."

The book is to be commended to the attention not only of the general reader of political or international subjects, but also of the student of contemporaneous American public questions who desires to comprehend at first hand the import of some of the problems now before the people of this country and likely in one way or another to affect their national influence and shape their destiny.

CHARLEMAGNE TOWER.

A Treatise on International Law. With an introductory essay on the definition and nature of the laws of human conduct. By Roland R. Foulke, of the Philadelphia Bar. Philadelphia: The John C. Winston Co., 1920, 2 vols.

The two volumes consist of 961 pages of text. To the second volume is added a Table of International Persons, so-called, covering 38 pages, and a complete index to both volumes, covering 88 pages, is duplicated and appended to each volume. It should be observed that a preliminary table of contents, covering 26 pages, is found in Volume 1, and that a like table of contents precedes and a full summary closes each chapter. The text is subdivided under many heads, printed in capitals. There are extensive footnotes and citations which often cover more than half and sometimes the entire page, and there are included many cross-references to kindred passages in the treatise itself. By these methods the work is made useful as a hand-book for rapid reference.

The preliminary essay points out the great confusion among writers due to failure in distinguishing the different conceptions of what law is. Mr. Foulke thinks if we cling to one of these, to the exclusion of the others, it is impossible to understand international law. He assumes that law has to do with human conduct, which he defines "as an adjustment of acts to ends," and after discussion propounds the following definition:

Law as applied to human conduct in its broadest signification which will include all possible meanings, is the jural conception of human conduct as influenced by external factors other than forces of nature.

The publisher's circular, after saying that "There is nothing in English which can compare with this treatise" heads a further paragraph concerning it thus: "International Law Made Absolutely Clear."

Perhaps the above definition may not convince us that all difficulties are overcome. It ought to be added that Mr. Foulke in ample notes collects and compares the many definitions of Law given by writers. None it is believed has been found wholly adequate and it is too much to hope that Mr. Foulke's will satisfy all critics. The term "jural conception" is one which Mr. Foulke values and very frequently employs. He concludes that Law "has no origin or existence outside the mind of the thinker, although conduct and the external factors are facts which have existed and exist in the world today."

The second chapter is devoted to "Facts of International Life." Nations and states are defined and the latter are classified, their acts, recognition, community, equality and jurisdiction considered. "A state," it is asserted, "is a community of men exerting its power as an organization by its own inherent force and not by a delegation of power from any other organization." It is submitted that any little criminal or rebellious community exercising "its own inherent force," however temporary, would fall within this description, and a band of horse thieves in the hills, preying on the country, would be a state according to this definition. Mr. Foulke would seem to accept it as such since he says "An organization of men for a brief period is a state. . . . A mob does not constitute a state because it has no organization." Not infrequently a mob has a temporary organization and in that case it is a state if we accept Mr. Foulke's test. Pirate crews are not treated as states by the authorities, but this definition would include them as such, and Mr. Foulke declares that they "bear all the marks of a state." It is submitted that the definition is highly artificial and arbitrary and not in accord with the understanding of ordinary men or scholars. If every writer attaches his own meaning to words, neither science nor language is aided. It tends towards Babel and not towards clarification of thought or expression.

The author classifies states as fixed states, moving states, independent states, belligerent and insurgent states, dependent states and neutralized states. This division is, of course, along lines having no coördination, but it is used as showing those often followed. It is

illustrated by elaborate footnotes and many citations to leading authorities. There is added a valuable alphabetical list of states classified with facts and references as to the origin and status of each. This includes many small remote and obscure organizations concerning which information is not easily accessible elsewhere. There is a like annotated list of neutralized states, equally painstaking and comprehensive.

Mr. Foulke says "States are facts and their origin and extinction are facts or events in state life, just as the birth of an individual is a fact in his life," but he distinguishes between the "existence of a state as such and its participation in international life." He says, "every state, therefore, originates as a group of individuals separating from an already existing group." He discusses the extinction of states and cites the partition of Poland as one of the rare cases of such extinction. Mr. Foulke discusses the Family of Nations (p. 106) and prints a table of those existing as of Aug. 1, 1914, with date of appearance on the international horizon since 1648, showing twenty-six monarchies and twenty-seven republics.

He says "The Monroe Doctrine may very properly be considered a contribution by the United States to the maintenance of the balance of power."

Chapter 3 is devoted to the "Definition and Nature of International Law," and, like every chapter, is closed by a summary of facts and conclusions.

At page 183 then Mr. Foulke takes up "Substantive International Law." He gives to this six chapters covering Intercourse, Territory, The Sea, Treaties, Independent States and Aliens and State Conflicts. Among the interesting, though brief, discussions is that on Exclusion and Expulsion of Aliens (Vol. 2, p. 8), a right which he fully upholds with many references.

Beginning with Chapter 10 and including nine chapters "Remedial International Law" is treated, including War and Neutrality. The following titles of chapters, Property in War, Public Property in War, Private Property on Land and in Maritime Belt in War, Private Property at Sea in War, and Private Individuals in War, include topics which have become of overwhelming importance since proceedings so much more drastic than had been thought lawful have been adopted in the present great conflict. He reaches the conclusion,

however, that rules of warfare "will not be observed by any state whose civilization is not equal to the content of the rules."

As to the use of poison gas and flames, he says: "The international lawyer can really say nothing upon the question of the implements of war, as in no case has any argument ever prevailed to restrain the use of any particular implement, and the question after all is what will be found to be most efficient for the purposes in view." This opinion accords with that of many naval and military officers and, distressing though it is, this writer has found much difficulty in meeting their arguments. The discussion of neutrality covers some ninety-seven pages and is full and the notes copious and many of the references modern.

Under the title "Private Property on Sea in War," the topic "Destruction on Sight without Capture" is discussed, and the practice is found indefensible. There is no list of cases cited, but a full list of authors referred to and cases may be found in the twice printed index.

Mr. Foulke has perhaps put the accent more strongly on logic, as he, in a distinctly individualistic way, conceives it, than on precedent or authority, but he has gone to the latter with intelligence and industry. He has not neglected the vast and valuable mass of material to be found in modern periodicals. This illustrates the best recent thought and investigation in modern problems and practices. Its inclusion by references in his notes adds much to the usefulness of his volumes.

This reviewer cannot fully accede to the proposition of Mr. Foulke's publisher that by this work "International Law" is "made absolutely clear." To the further statement of the publisher that "To understand international law a person must be something of a man of the world, have a good knowledge of history and economics, the faculty of clear thought, and above all must not let his heart run away with his head," this reviewer would add that a wide knowledge of principle and precedent in the decisions of the tribunals and the writers of authority might be of assistance; that more than in most branches of law the head has yielded much to the heart in international law, which the writings of the great founder Grotius will exhibit and those of Vattel and many moderns will confirm. Mr. Foulke's attempt is ambitious and his performance will be found

stimulating, modern and valuable, even though not at all times convincing.

CHARLES NOBLE GREGORY.

Commercial Policy in War Time and After: A Study of the Application of Democratic Ideas to International Commercial Relations.

By William Smith Culbertson, with an introduction by Henry C. Emery. New York: Appleton & Co., 1919. pp. 479. \$2.50 net.

This work is an impressive discussion of the new economic world in which the war has left us. There has been a terrific shattering of old systems, national and international. Economic tendencies that had long existed have been freed from restraints and left to do their natural work and, chief among these, has been the tendency to enlarge the economic functions of governments.

In addition, however, to liberating old forces, the war introduced new and far-reaching ones which caused the tendency toward the public control of industries to proceed with a rush and produced startling transformations, as it were, over night. The expression "industrial army" became no longer a figure of speech. There was such an army in literal fact furnishing guns, missiles, food, clothing, ships, airplanes, etc., for the men fighting in the trenches. The men in the shops were part and parcel of the fighting force. Direct production of some things by the state and, on a larger scale, the production by contractors acting under authority of the state, became striking facts and these enlarged economic activities in every country engaged in the world conflict remain as a permanent aftermath.

This has created a novel international situation. Before the war individuals traded across boundary lines with the permission of their own governments and with some little fostering care by them. Now governments assert a direct control in this sphere and a nation imports and exports goods by grace of its own government and foreign governments. Importing and exporting are permitted, fostered, restricted or, by embargo, prohibited according to the policy of states, each of which acts for itself. Greater powers than ever before engaged in a scramble for commercial advantage are now active in the arena. It means that the world is an organism in a true sense. Economic activities have always treated political boundaries in a

cavalier manner and trade has never confined itself to the region guarded by a particular flag. On the other hand, commercial invasions of foreign lands never before had a tithe of the political backing that they are beginning to get and are likely to get, to a still greater extent, in the future. In a thousand ways governments are participants in international trade and have their hands on transactions not merely for relieving famine by exporting foodstuffs, or for furnishing employment to idle workmen by exporting products of any sort, but for a score of economic ends.

Much of this is, briefly but clearly, presented in this volume, and it suggests the fact that, as trade unions have united men in societies and as these societies become the basis of states themselves, it may conceivably unite nations in a world society and, ultimately, in a world state. It appears, however, that trade between individuals furnishes many occasions of quarreling and that trade between nations may have the same effect. If it does so, however, another inference is clear—that, as the quarrels of individuals are settled by ordinary courts, those of nations will have to be settled in a similar way and that, as quarrels between individuals are very largely forestalled and prevented by law, so international quarrels will have to be prevented in the same way. We are in an economic society that is world-wide—one in which single nations are trying actively each to promote its own interest. They are doing it on an unprecedented scale and there is connected with the process both an inspiring hope and a grave peril, and it would require either blindness or willful ignorance to fail to see how pressing is the need of international institutions of some kind to prevent the world organism of the future from becoming a worse arena of conflict than has as yet existed.

The book sketches a goodly number of measures taken by governments for guarding their own citizens, as they are drawn into international dealings, and describes the new positions in which the problem of protective tariffs is placed. The conclusion is as interesting as any part of the work, chiefly because it presents a view which, in one way, strongly favors a League of Nations and, in another way, somewhat obscures the natural method of attaining it. In an interesting introductory note Professor Henry C. Emery expresses some dissent from the author's conclusions, on the ground that no League of Nations is likely to have much permanence which is not a League "*against* something." The author, on the other hand,

expresses the conviction that the Entente is not a model League because it is a combination against Germany. He condemns the union of Mittel-Europa because it is imperialistic and, if it had conquered in the war, would have gone on to other fields conquering and subjugating. It would have had no liking for democracy within its component nations and none for the principle of democracy in the relation of these nations to each other. It would have been a world empire with Mittel-Europa as its central area, Prussia as its ruler and the Hohenzollern system over all. The opposing union—that is, the Entente—certainly will not be criticized on that ground, and facts which prove this are contained both in the book itself, and in Professor Emery's criticism. The Entente derived its vigor from the fact that it was "against something" and world-wide imperialism was that "something." Germany was the embodiment of it, while within the Entente the democratic principle prevailed in both a national and an international way, except in Russia which has ceased to be an element. There was democracy within the states and between them and it will be hard to find in discriminations against Germany which were put into the Treaty of Peace for no other purpose than to make the world secure against German imperialism, an evidence that the Entente, itself, is not already the proper nucleus for a much broader union, ultimately including a renovated Germany, and capable of accomplishing the ends which, in this work, are so well defined as the most pressing need of the world of to-day. The great value of the work is the revelation it makes of the new conditions which make some such effective union of nations a *sine qua non* of future prosperity and peace.

JOHN BATES CLARK.

Authority in the Modern State. By Harold J. Laski. New Haven: Yale University Press, 1919. pp. 398.

"This volume," the author tells us in his preface, "is in some sort the sequel to a book on the problem of sovereignty—published in March, 1917. It covers rather broader ground, since its main object is to insist that the problem of sovereignty is only a special case of the problem of authority." Conceiving the state as an aggregation of certain group-units rather than as an organized citizen-

community whose final cause is the welfare of a united although complex body, our author is inclined to deny (page 81)

the claim of the state to represent in any dominant and exclusive fashion the will of society as a whole. It is true that it does in fact absorb the vital part of social power; but it is yet in no way obvious that it ought to do so. It is in no way obvious immediately it is admitted that each individual himself is in fact a center of diverse and possibly conflicting loyalties, and that in any sane political ethic, the real direction of his allegiance ought to point to where, as he thinks, the social end is most likely to be achieved. Clearly there are many forms of association competing for his allegiance.

Our author doubts the possibility of continuity in the present political order in the United States, and thinks the dawn of a "new time" to be already brightening the sky. Nor will this coming regeneration find its pattern in existing democratic institutions.

What, in a sense, is being born is a realization of the state; but it is a realization that is fundamentally different from anything that Europe has thus far known. For it starts out from an unqualified acceptance of political democracy and the basic European struggle of the last hundred years is thus omitted (p. 116). . . . It is towards a new orientation of ideals that America is moving. . . . It is upon this fact that ours is an age of vital transition that the evidence seems clearly to concentrate. . . . Violence, as with the militant suffragists in England, may well come to be regarded as a normal weapon of political controversy; nor have those who suffered imprisonment for their acts regarded the penalty as other than a privilege. In such an aspect, the sovereignty of the state, in the only sense in which that sovereignty can be regarded as a working hypothesis, no longer commands anything more than a partial and spasmodic acceptance (pp. 117-119). . . . The one thing in which we can have confidence as a means of progress is the logic of reason. We thus insist, on the contrary, that the mind of each man, in all the aspects conferred upon him by his character as a social and a solitary being, pass judgment upon the state; and we ask for his condemnation of its policy where he feels it in conflict with the right.

That, surely, is the only environment in which the plant of liberty can flourish. It implies, from the very nature of things, insistence that the allegiance of man to the state is secondary to his allegiance to what he may conceive his duty to society as a whole. It is, as a secondary allegiance, competing in the sense that the need for safeguards demands the erection of alternative loyalties which may, in any given synthesis, oppose their wills to that of the state (pp. 121-122).

Mr. Laski clearly discerns no single final authority in the state, and hence individual loyalty may well find its objective in various directions. But any such view excludes the conception of the state

as a citizen-body whose diverse elements must be regarded as fused in a higher synthesis of the whole. Assuredly it is in vain that we posit any coherent system of political administration unless this be supported by enforceable law derived from a single ultimate source. Here alone can we hope to find the *order* indispensable to every practicable government. Although our differences be adjusted through judicial or arbitral decision, there is none the less need of an enforcing power. In other words, order springing from law clothed with a definite *sanction* must be clearly visible in every state-plan. Nor do the highly disturbed conditions now in evidence on so wide a field call for the emergence of new *principles* of action, but rather for an evenly balanced application of very ancient and familiar principles to the special needs of the moment. Political authority—one and indivisible—must be recognized and obeyed by every section or group in the state; these groups cannot claim to be themselves the springs of a power which must be securely posited before they may even claim to exist.

Three chapters of Mr. Laski's book are devoted to carefully executed studies of Bonald, Lamennais, and Royer-Collard, while the fifth and concluding chapter reviews at some length present-day aspects of "Administrative Syndicalism in France." The Vicomte de Bonald, the most celebrated protagonist of theocratic conceptions during the reign of Louis XVIII, preceded in his theories by some twenty years the Swiss von Haller, whose work on the restoration of political science saw the light in 1816, he being thus a contemporary of Joseph de Maistre and the famous group of constitutional royalists known as "Doctrinaires." The members of this group, whose aims are ably sketched in the *Histoire Générale* (Vol. 10, Ch. III.) and in the *Cambridge Modern History* (Vol. X, Ch. II), were: Royer-Collard, Camille Jordan, de Serre, de Barante, Guizot, Lainé, Maine de Biran, Beugnot, Mounier, Rémusat, de Broglie, Decazes. To the present writer Mr. Laski's painstaking industry tends, at times to somewhat obscure a clear view of the notable subjects of his essays, though the student will gain much information from these pages. The author, however, is by no means exact at all points as, for example, in his appended "Note on the Bibliography of Lamennais" (pp. 388-389), which is neither as complete nor as accurate as the bibliography appended to the valuable article on Lamennais in the eleventh edition of the *Encyclopedia Britannica*. Mr. Laski's book will be read with

interest by all interested in the many new views of society and government now being developed.

GORDON E. SHERMAN.

International Waterways. By Paul Morgan Ogilvie, M.A. New York: The Macmillan Company, 1920. pp. 424.

The author sees a closer connection between the freedom of navigation on the high seas and the principles of law relating to international rivers than will perhaps be generally admitted. But even if his view is extreme, he has at least helped clear thinking by showing that as commerce in its relations to modern society is a vital necessity (p. 8), the legal aspects of that commerce should be viewed as a whole and not piecemeal or according to some arbitrary classification of subject matter.

After some general discussion of the importance and development of water-borne commerce, there is a chapter on the institution of maritime law which is almost unrelated to the rest of the work. The connection which the author assumes between the early codes and "the unrestrained navigation of the sea" (p. 29) cannot fairly be said to exist, either historically or logically.

The historical sketch of sovereignty and freedom of the seas is on the whole an admirable summary, although not all of its conclusions will be accepted. The author does not sufficiently explain the British policy of the nineteenth century (p. 106) and his statement as to the liberality of the British view is far too sweeping. See, for example, President Grant's message of December 5, 1870, in Messages and Papers of the Presidents, Vol. VII, pp. 102-105.

In his consideration of limitations on the use of the sea during war, the author assumes an exactness of legal right before the outbreak of the World War (p. 133), which did not exist, and The Hague Conventions and the Declaration of London are not even mentioned. The author says, "the laws of maritime warfare represent a virtual compromise between the irreconcilable interests of neutrals and belligerents" (p. 134), whereas the failure to agree upon the Declaration of London, aside from any consideration of events since 1914, is alone sufficient to show that no such compromise had been reached even nominally.

Mr. Ogilvie would date the principle of freedom of navigation in

inland waterways from the Congress of Vienna (1815) or from the declaration made by the Allied Sovereigns in Paris in 1814. But the declaration of the Congress of Vienna was not "unequivocal" as the author supposes (p. 151). The language was not that used in 1814, as is carefully pointed out by Westlake who says, indeed, "The wording seems to have been skilfully chosen in order to mask a retreat, intended by some members of the congress, to the ground of *condominium*." (International Law, Part I, p. 150.)

Nor will international lawyers agree that claims to jurisdiction over such bays as the Chesapeake can be summarily dismissed as "extravagant" (p. 133). The whole question of marginal waters is one of much greater complexity than is realized and is probably not to be settled by any hard and fast rules—the geographers have pointed out that one coast line may be very different in character from another and that most remarkable results follow in various parts of the world from a line drawn regularly three (or even, as suggested, six) sea miles from the coast. No one would agree, for example, that naval battles could or should be fought off the inhabited coasts of neutrals at any such arbitrary limit of distance.

In mentioning the importance to Switzerland of the development of the Rhine, it should be pointed out that the Swiss right was first recognized at the Conference of Paris, where representatives of Switzerland were heard. See Articles 355 and 359 of the Treaty of Versailles.

But while we may not always agree with Mr. Ogilvie, his knowledge of his subject and his clear style make his study one which is to be welcomed.

It is difficult to speak too highly of Part II of Mr. Ogilvie's work, "A Reference Manual to the Treaties, Conventions, Laws and Other Fundamental Acts Governing the International Use of Inland Waterways." Only those who have endeavored to study any particular international river question in detail can well appreciate the learning and industry which have gathered together this compendium of information. A work such as this, which has not been done before, and which is so well done that it will not have to be done again, is a real contribution to legal literature, for which the author will be thanked by every other worker or student in his field. The arrangement of the material is admirable and convenient and after careful checking with the material regarding waterways available at the

Conference of Paris, it appears to the reviewer that the Manual of Mr. Ogilvie is substantially complete.

The whole work is thoroughly indexed and contains a bibliography.

Mr. Ogilvie promises a subsequent treatise on "International Rights on Inland Navigable Waterways" which all the readers of his present work will await with interest.

DAVID HUNTER MILLER.

Report on the Foreign Service. New York: National Civil Service Reform League. pp. 322 (no index).

The diplomatic and consular officers of the United States will have an enormously increased burden of responsibility in consequence of the World War. Consequently, the National Civil Service Reform League has held it to be desirable to gather a mass of facts on the subject of the needs of the foreign service and has made certain recommendations for its improvement. Chief of these recommendations are: (1) for an improvement of the entrance examination for the foreign service and placing the appointments more strictly upon a merit basis; (2) for the purchase of embassies, legations and consulates; (3) for an increase of salary in all the branches of the service at home and abroad; and (4) for the extension of the merit system of promotion to the selection of ministers. The special committee which made the investigation for the League comprised Ellery C. Stowell, chairman, Richard H. Dana and George T. Keyes, *ex-officio* members, Ogden H. Hammond and Ansley Wilcox, all competent men, the chairman especially being an accomplished student of international affairs.

The Committee says that, hereafter, the extension of our commerce will depend very greatly upon the coöperation of the Government with the individual and the consequent assistance of the Government's agents abroad. It emphasizes the responsibility of these agents in preserving our peaceful relations with foreign Powers and the importance of attracting to the service some of the able young men who now enter law and railroad offices. While reprobating a few of the diplomatic appointments which have been made in recent years, the Committee registers its approval of the manner in which President Wilson and the State Department have resisted the pressure of the spoilsmen to injure the service. The Committee finds that

in the Consular Service, especially, appointments and promotions have been fairly administered and that the Honorable Wilbur F. Carr has been sustained in his high-minded and efficient direction. "We now have a Consular Service," says the report, "which is placed on what is substantially a merit basis, and we have a half loaf in the diplomatic branch."

Pursuing the recommendations which have already been noted, the Committee thinks the age limit for admission to the foreign service should be reduced to thirty years, that the examinations should be open to every citizen of the United States and not by designation of the President or on recommendation of Senators or Representatives, and that examinations should be held at places convenient to applicants. Appointments, too, should not be distributed among the States in proportion to their inhabitants, but should be freely given to the most competent.

Concerning the salaries and allowances, the Committee shows that the French Ambassador at London receives \$7,722 per annum as his personal salary, and \$27,799 for entertainments; the French Ambassador at Washington has the same salary and \$19,691 for entertainments; the embassy buildings are owned by the French Government. The British Ambassador at Paris receives a salary of \$55,932 and the British Ambassador at Washington \$48,665. The embassies are owned by the Government, but there appears to be no entertainment fund. The United States, on the other hand, pays its highest ranking Ambassadors \$17,500 per annum, makes no entertainment allowance and does not own its embassies in any European capital. The salaries of the higher grade of American Consuls, the Committee finds, are lower than those paid by other governments.

With reference to the extension of the promotion system to the principal officers in the diplomatic service, the Committee shows that the French Minister at Berlin when the war broke out, had had a previous diplomatic experience of ten years, and the British Ambassador of thirty-nine years; at London, the French Ambassador had had a previous experience of sixteen years, and the British Ambassador at Paris twenty-two years. Other illustrations on this point are given. Commentary is made upon the coincidence of diplomatic appointments and heavy contributions to political campaign funds by the gentlemen chosen to represent this country abroad.

The Committee recommends that consuls be permitted to transfer,

on occasion, to the diplomatic service, wisely arguing that once the right of transfer is recognized the prestige of the consular service will rise to the level of the diplomatic service. An improved system of transfer from the State Department staff to the diplomatic and consular service is urged and the need of increasing the salaries which are now paid in the State Department. A table gives the purchasing power of the salaries of 1918 compared with those of 1898. It appears that to make his salary of 1918 equal in value to the salary paid in 1898, the Secretary of State, who now receives \$12,000 per annum, should have \$22,230, and the Second and Third Assistants who now receive \$4,500, should have \$9,726.50. Several interesting appendices relate to political appointments, citing the famous Van Allen case in 1893 and the more recent case of James M. Sullivan, Minister to the Dominican Republic, and the recommendations for improvement of the service made by officers of the department and diplomatic and consular officers.

Nobody who reads this review will deny that most of the recommendations of the League are sound. Embassies and legation buildings, generally, and some consulates should belong to the nation whose representatives occupy them, and the nation should pay for the maintenance of the buildings. The problem of salaries disappears as soon as this is done. There is no good reason why there should not be greater use of the promotion system in the diplomatic service. Interchange between the diplomatic and consular services would be a happy solution of the anomalous condition under which consuls enjoy less prestige than diplomats.

Some of the League's recommendations are directed to the Executive, which regulates entrance examinations and can arrange them to suit itself, may extend the promotions in the diplomatic service, and, probably, might prescribe an interchange of diplomatic and consular officers. With salaries, allowances and the purchase of residences abroad, of course, Congress alone can deal. The question of political contributions and diplomatic offices as a reward to those who have made them is the most serious of all the problems. It can only be partly solved by the Government's ownership of the embassies and legations, for diplomatic service with foreign residence and social prestige will always be attractive to a certain class of rich men.

It is a hard thing, too, to say how the best class of young men can be attracted to the foreign service in view of the many avenues to

success offered by work at home. A man who enters the foreign service can only look forward to a salary which is insignificant when compared with that of a railway president or a successful lawyer. The reviewer suggests, too, that if only very young men, as the report proposes, are taken into the service, the question of their expatriation arises. The question, in fact, exists already. It is not good for a man to live continuously outside of his own country, keeping up his knowledge of home affairs only by reading American newspapers and conversing with traveling or non-resident Americans. The home government should, in fact, require its agents to return at stated periods and should put them to work at points where they must come in contact with home affairs.

This book is useful, not only for what it says, but for the discussion which it should arouse, and it is to be hoped that the discussion may become more general than it has been hitherto, for out of it improvement will come.

GAILLARD HUNT.

Histoire de l'Internationalisme. By Christian L. Lange. Kristiania: l'Institut Nobel Norvegien, 1919. Vol. 1, pp. xv, 520.

In these days when the development of some effective form of international government is of prime importance to all the world, this book is a timely one. It is written, also, by a master-hand. Its distinguished author, the Secretary of the Nobel Committee of the Norwegian Storting, technical delegate to the Second Hague Conference, secretary for many years of the Interparliamentary Union, and a publicist eminent in his own country and abroad, was admirably fitted by training and experience to write this, the standard, History of Internationalism. His erudition has enabled him to gather his materials from many and distant sources. The best books relating to his subject in seven languages have been utilized, not only for the best that is in them, but for a condensation and an interpretation which are noteworthy for their clear and luminous incisiveness.

This first volume of the work covers the period from classical antiquity to the Peace of Westphalia. Internationalism, or, rather world-organization, in the ancient world, is discussed in a dozen or fifteen pages which stress Hellenic federation and arbitration and the society of Mediterranean cities known as the Roman Empire.

The humanitarian and international ideas of Zeno, Cicero, Seneca, Epictetus and Marcus Aurelius are cited to show the progress, and the backwardness, which characterized the ancient world under Græco-Roman leadership.

Primitive Christianity, the Christian Church and the mediæval sects, are passed in review, and their place in the story is reflected from the views of Marcian, Origen, and Lactantius; St. Augustine, Henry of Susa, John of Legnano; the Chiliasts, the Cathari, the Albigenses, the Vaudois, the Lollards, and the Hussites. The progress made towards internationalism and indeed towards extreme Tolstoian and Quaker pacifism, during this period, despite the conflicting forces between and among the various exponents of Christianity, may be estimated from the teachings of William Whyte, a disciple of John Wyclif. Whyte carried the Lollard doctrines to their logical conclusion by condemning all war, even that in defense of one's country, and by opposing the infliction of capital punishment upon any human being.

The champions of the internationalism, or universality, of the Holy Roman Empire are represented by Dante, Marsile de Padua, Engelbert of Admont and Jacques Antonii; while the Papacy's claims are put forward through a clear statement of the views of Thomas Aquinas. The most advanced internationalist ideals during this period, our author finds in the works of Pierre Dubois and King Georges Podiebrad of Bohemia, and in the "Treaty of Universal Peace" of October 2, 1518, concluded between Francis I and Henry VIII, and adhered to later by Charles V; and to an exposition of these ideals he devotes three dozen instructive pages.

One of the most valuable features of this part of the work is a brief but instructive history of mediæval arbitration (pp. 123-130). From this story it appears clear that Novacovitch was right when he noted the decline of arbitration with the rise of the "great powers"; and our author laments the fact that the practice of arbitration should have been so brusquely ended by them. The continued influence of arbitration, however, even though fallen into desuetude, was apparent in the works of such writers as Pierre Dubois. As for the sanction of arbitral awards, the mediæval world had gotten no farther than the advocacy of military force applied by the arbitrator; but even our own age will recognize in this the ruling passion strong in death.

The internationalism of the Renaissance found expression in the

Christian humanists, Erasmus (upon whom Dr. Lange bestows enthusiastic but discriminating praise), More, Vives, Clichtove, Nettesheim, Franck, Rabelais, and Montaigne. The three chief impulses of the Renaissance, namely humanism, geographical discoveries, and religious reformation, appear to have had conflicting or confused influence upon the development of internationalism; while the Protestant and the reformed Catholic churches alike failed—as in the days of the early Christian church—to solve the great problem, Bellarmino, Calvin and Luther having contributed but little or nothing towards its solution.

As the heresies of the Middle Age supplied a leaven of genuine internationalism to ecclesiastical orthodoxy, so the Protestant sects of the seventeenth century advanced the standard of internationalism—as of most other beliefs and practices—far beyond the terminus of official Christianity. The Anabaptists, Mennonites, Moravians, Familists, Independents, and particularly the Socinians and Quakers, were the leading non-conformists in the matter of war as in most matters of peace. Radicals though they were, our author evidently regards with a favorable eye and a sense of gratitude such sturdy champions of the international ideal as Menno Simons, Socinus, Fox, Penn, Barclay and Dymond.

How rich the seventeenth century was—both within and without the realm of the church—in writers on various phases of internationalism, our author makes very plain by his discussion of the theories and plans of a round score of dreamers, idealists and planners of various lands. Of these, about one-half are of German and one-half of French descent, and our author attaches most importance among them to Comenius, De la Noue, and the anonymous author of the “*Apologie de la Paix*.”

The development of international law in the hands of Franciscus a Victoria, Suarez, Gentilis and Grotius, is exceedingly well told in itself, and its basic connection with the internationalism of later times is made very clear.

Finally, more than a hundred pages are devoted to the beginnings of the international organization which is becoming familiar in our time. More than a third of these fall to Crucé, about the same number to Sully, and the rest to Campanella and Postel. Although most readers are here on more familiar ground than is found in many parts of the book, they will appreciate the excellence of the analyses

and be impressed by the great promise of the birth and infancy of those ideals of international organization, the approaching realization of which will doubtless be unfolded in the author's much-anticipated Volume II.

WILLIAM I. HULL.

La Situation Internationale de la Grèce (1821-1917). Recueil de documents choisis et édités avec une introduction historique et dogmatique par CHARLES STRUPP. Zurich: Die Verbindung. pp. 256.

The Balkan Peninsula played a prominent part in the recent World War, not only as an important theater for the war operations of the two great contending parties, but also as a center of European diplomatic intrigue. While the Central Powers, after outwitting their opponents by winning over Turkey and Bulgaria to their side, were straining every nerve to entangle Greece also in their net, the Entente Allies by their inept diplomacy came near losing the coöperation of the Hellenic State in the great struggle.

As is well known, the siding of Greece with the Entente Allies was not effected peacefully. The Hellenic State was shaken to its very foundations because of the autocratic rule established in that country by the ex-King Constantine—the brother-in-law of the former Emperor of Germany—who, disregarding the popular will as expressed by the elections of June, 1915, was secretly working for the interests of the Central Powers and waiting for an opportunity to throw in his lot with them. A great deal has already been written on this subject from the point of view of the Allies, but little attention has been hitherto paid to it by those writing on the German side.

A book which has recently appeared entitled *La situation internationale de la Grèce*, by Charles Strupp, makes an attempt to fill this gap. The work consists of an introduction of 64 pages, with a collection of diplomatic documents and treaties concerning the Hellenic State from the year 1821, the time of the Greek War of Independence, to the year 1917, the time of the expulsion of Constantine from Greece.

Dr. Strupp in his introduction reviews the diplomatic history of the Greek War of Independence and also gives a summary of the policies at that time advocated by the European Chancelleries, and

notes their gradual change to a point of view favoring the liberation of the Greek people from the Turkish yoke.

The Revolution of 1862 which had as an object the overthrow of the Bavarian dynasty in Greece is dismissed by the writer with a few observations regarding the policy of the three Protecting Powers of Greece (Great Britain, France and Russia). He overlooks the very cause which gave rise to that revolution and to the previous one of 1843. As is well known, the expulsion of the late King Otto of Greece was due to his arbitrary rule. The Swiss writer succinctly traces the political events which followed the ascension of the late King George I to the Greek throne, and after referring to the various vicissitudes through which the Hellenic State has passed, he discusses the events which have taken place in Greece during the recent World War.

It is in the course of this last review that Dr. Strupp attempts to justify the conduct of Constantine towards the three Protecting Powers on the plea that the ex-King's only concern was to "keep his country out of war," or, in a word, to remain neutral. It is possible, indeed, that the very object of the book is to justify the conduct of Constantine during that war. Referring to Constantine as Greece's "grand roi" (Great King), the Swiss writer criticizes the stand taken by the Allies toward Greece. "The political intervention," he says, "of the so-called 'Protecting Powers' of Greece is nothing but a new manifestation of the tendencies of the Holy Alliance which were characteristic of the history of the nineteenth century." But it is a travesty of truth when he says that if Greece resisted until she was subjected to the force of foreign guns, this admirable struggle should entitle her to bear the title of champion of international law thus cruelly wounded during this war. Thus we are given to understand that it is the Entente Powers who have violated the law of nations and not Germany and her Allies. According to Dr. Strupp, Mr. Venizelos was only an easy tool in the hands of the Allies. The apologist of Constantine endorses the ex-King's theory that, according to the Greco-Serbian Treaty of Alliance, Greece was not bound to help Serbia when attacked by Bulgaria. The treaty is so explicit on this point, and the circumstances under which it was concluded are so well known, that it is needless to dilate upon this point.

In discussing the expulsion of Constantine by the Allies—who

founded their right for intervention on the provisions of the treaty of 1863 by which they had guaranteed a constitutional monarchy in Greece—he advances the sophistical argument that a *casus garantie* could only come into play in case the constitution was abolished, but not in case it was in any way modified, because, he argues, Greece is a constitutional monarchy as long as she has a king at her head and has a constitution. This is pure casuistry. According to this reasoning, the King of Greece may violate the constitution, but as long as he limits his action to modifications of it and not to an abrogation, Greece continues to be a constitutional state, notwithstanding the provision of the constitution which specifies in what manner modifications may be made to it. But supposing, says this apologist of Constantine, that the treaty of 1863 gave the right of intervention against any kind of violation of the constitution, still this right cannot be invoked by the guaranteeing powers without a previous request from Greece. "Who," he adds, "would have the right to request the assistance of the guarantors? If one does not wish to come into conflict with the most fundamental principles, it would be no other but the person who, from the point of view of international law, represents the Hellenic State, that is to say . . . the king in conformity with Article 32 of the revised Greek Constitution of 1911."

Dr. Strupp evidently overlooks the fact that Greece is not Prussia but "a royal democracy," and that, according to Article 21 of her constitution, "all powers emanate from the nation" and that, therefore, the King of Greece cannot say "*l'Etat c'est moi*." The article of the constitution which he invokes (Article 32), that the king is the supreme chief of the state, exists in all the constitutions of those constitutional states whose chief of state is a king, but this does not mean that such sovereigns are absolute monarchs. On the contrary, the government of such states lies in the hands of the representatives of the nation, or the parliament, and this is also the case with Greece.

The writer, emphasizing his point still further, argues that the charge that Constantine violated the constitution by twice dissolving the national legislature has no foundation because the ex-king in thus acting adhered to a definite provision of the constitution (Article 37), and his right to do this was absolute. In other words, that he had the right to dissolve the Greek Parliament as many times as he wished. Dr. Strupp fails to see that under such a system constitutional royalty would be a mere mockery, and that a king by resorting to measures

like this can assume dictatorial powers under the guise of the exercise of constitutional authority.

Referring to the status of the reigning King of Greece, Alexander, he says that the latter is only a private person with a royal title because neither the king nor the heir to the throne have abdicated . . . and that therefore Prince Alexander is not a king."

The champion of Constantine evidently forgets the fact that the Allies in their note to the ex-king at the time of his expulsion requested him to abdicate and that he agreed to leave the country. Therefore, as Mr. Venizelos has quite recently said in refuting this point of view, such argumentation is pure chicanery.

On the whole, Dr. Strupp seems to have assumed the task of justifying the arbitrary acts of Constantine, who during his short reign not only evinced a most autocratic spirit, arrogating to himself the so-called "divine right of authority" in Greece, but also has done everything in his power to help the cause of Germany and that of his brother-in-law William, as is evidenced by the secret correspondence exchanged between the two royal courts, and other official documents, which have since that time been made public.

THEODORE P. ION.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

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GEO. A. FINCH.

NOTES ON THE RECOGNITION OF DE FACTO
GOVERNMENTS BY EUROPEAN STATES

By AMOS S. HERSHEY

*Professor of Political Science and International Law, Indiana
University*

This is a topic that seems to have almost wholly escaped the attention of so-called authorities or publicists on international law. Bonfils, for example (7th ed., p. 135), calls attention to the difference between the recognition of a new state and a new government, but fails to show what the distinction is. Calvo (5th ed., 1, pp. 236 ff.) discusses rather fully recognition of belligerency and independence, but apparently has nothing to say of the recognition of new *de facto* governments in case of revolution. Even Pradier-Fodéré, the most voluminous of the authorities, seems to have nothing to impart on this subject. There is a very interesting discussion of the theoretical grounds for recognition of any sort in Lorimer's *Institutes of the Law of Nations* (1, pp. 93-119), but no practical guidance.

Exception may, however, be made of several publicists in French, including two who have written valuable monographs on Civil Wars in international law. The following excerpts from these writers must suffice to illustrate what may be regarded as the doctrine of recognition of *de facto* governments as laid down by European and Latin-American authorities.

Block (Art. on "Reconnaissance Internationale," in *Dictionnaire Général de la Politique*, 1874, T. II, pp. 772-73) says:

D'abord, il peut y avoir un "gouvernement provisoire." On n'accrédite jamais un agent diplomatique officiel, ambassadeur ou ministre, auprès d'un gouvernement *provisoire*; mais l'on peut donner à un agent plus ou moins officieux des pouvoirs d'entrer en relations, de se concerter avec lui, de traiter pour toutes choses urgentes. Au fond, cet agent sera un ambassadeur privé des immunités honorifiques dont jouissent habituellement les représentants des puissances étrangères. Du reste, bien des nuances sont possibles ici, selon les circonstances et la manière de les apprécier.

Puis, deux partis peuvent se disputer le pouvoir. Tant qu'il y a doute sur le succès définitif, les gouvernements étrangers ne connais-

sent que celui auprès duquel ses agents ont été accrédités. Le nouveau gouvernement n'existe pas encore, il n'y a donc pas lieu de le reconnaître. D'ailleurs, si l'on entrait prématurément en relation avec les chefs d'une insurrection, le gouvernement encore établi aurait le droit de se considérer comme offensé. Lorsqu'on se hâte trop de reconnaître, c'est souvent pour pouvoir aider au intervenir.

Le troisième cas à considérer, c'est lorsqu'une partie du territoire, une province, une colonie, veut se détacher de l'État dont il faisait partie jusqu'alors. Si ce territoire est victorieux dans la lutte au point que son indépendance est reconnue même par l'État dont il se détache, aucun doute ne saurait naître pour les pays étrangers: la reconnaissance est alors la simple constatation d'un fait patent. Si la paix n'est pas conclue formellement, chaque État étranger appréciera, à un moment donné, si le territoire qui prétend être indépendant a acquis une consistance politique suffisante pour présenter les garanties d'avenir. Mais on ne devra pas perdre de vue que l'État menacé de perdre une province verra toujours avec déplaisir qu'on considère la séparation comme un fait accompli, et selon les circonstances, il protestera ou se déclarera offensé. Un pays puissant ne fera pas attention à ces réclamations, mais un pays faible usera de prudence. . . .

Lorsqu'un État ne reconnaît pas un changement dans la constitution d'un autre, les relations diplomatiques cessent, comme dans la guerre, et les sujets des États boudés sont recommandés aux bons soins d'un État allié; ils sont alors protégés officieusement au lieu de l'être officiellement.

Respecting the recognition of *de facto* governments, Dr. Charles Wiese (*Le droit internationale appliqué aux guerres civiles*, 1898, pp. 237 ff.) says:

Si le nouveau personnel gouvernemental est entré en fonctions conformément aux principes prévus par le droit traditionnel ou constitutionnel du pays, il est immédiatement reconnu par les autorités étrangères auxquelles la notification a été faite ou par les agents diplomatiques de ces autorités, qui étaient accrédités auprès de l'ancien gouvernement. Telle est la seule influence que la légitimité découlant du droit interne exerce sur les rapports internationaux.

Lorsque, par contre, les modifications apportées à la composition du gouvernement résultent d'un coup d'état et qu'ainsi les autorités légitimes ont été mises de côté et sont remplacées, grâce à un acte de violence, les gouvernements étrangers sont obligés d'examiner les questions de reconnaissance avec plus d'attention. Pendant un temps plus ou moins long, la volonté populaire ayant, en effet, appuyé le gouvernement ancien, les puissances étrangères ne peuvent pas savoir

immédiatement si elle se prononcera pour ou contre le nouveau gouvernement, qui peut être qualifié d'usurpateur.

En pareil cas, les agents diplomatiques se bornent, pour commencer, à accuser réception de la communication, par laquelle les nouvelles autorités portent à leur connaissance qu'elles ont pris possession du pouvoir. En attendant la décision définitive de leurs gouvernements, ils continuent à traiter avec les nouvelles autorités les affaires courantes et à user des formules de courtoisie usitées. Le fait de traiter avec ces autorités n'engage nullement les gouvernements étrangers, parce que leurs agents sont couverts par la fiction des *rapports officieux*, soit de l'*action extra-officielle*.

Dès que les circonstances démontrent que le gouvernement de fait est accepté par le pays, les puissances étrangères le reconnaissent par le moyen d'un acte diplomatique—lettre autographe, dépêche de chancellerie, etc.—qu'elles font parvenir au gouvernement nouveau, soit directement, soit par l'intermédiaire de leurs agents diplomatiques, auxquels elles font parvenir, à cet effet, des instructions spéciales.

Cette reconnaissance est le point de départ de relations diplomatiques régulières nouées avec le gouvernement de fait, mais elle n'implique nullement, de la part des Etats étrangers, une affirmation de la légitimité du nouveau gouvernement d'après le droit interne de son pays. L'Etat étranger reconnaît seulement, par la notification ci-dessus mentionnée, que ce gouvernement est dépositaire de l'autorité et qu'il dispose des moyens qui lui sont nécessaires pour se faire respecter et pour agir efficacement.

Dr. Wiese cites in support of the above doctrine a part of the communication of Mr. Buchanan to Mr. Rush, quoted in Moore, *Digest of International Law*, I, p. 124. This former Under-Secretary of State and Minister of Foreign Affairs of Peru continues:

Ces principes sont applicables aux gouvernements de fait dont l'existence n'est pas contestée dans leur propre pays. Si, par contre, ensuite d'un coup d'état, une guerre civile vient à éclater, avant que la reconnaissance soit intervenue, et qu'il y ait doute sur la question de savoir de quel côté se trouve le véritable gouvernement, les Etats qui ne veulent pas intervenir suspendent toutes relations diplomatiques avec la nation ainsi divisée. Pour qu'il y ait "guerre civile" entraînant la suspension des relations diplomatiques, il faut que le pays soit divisé en deux fractions importantes; il ne suffirait pas de quelques protestations isolées des partisans de la légitimité, qui soutiendraient leur point de vue, même les armes à la main.

Lors même qu'une véritable guerre civile vient à éclater, les puissances étrangères peuvent, sous leur propre responsabilité, recon-

naître l'un des gouvernements en lutte. Dans ce cas, elles cessant de se placer sur le terrain du droit, pour se livrer à un acte de politique internationale.

Il est important de remarquer que le fait, par l'un des gouvernements en lutte, de détenir le siège principal du gouvernement ancien et les archives de celui-ci, ne serait pas de nature à lui permettre de nier l'existence d'une véritable guerre civile et d'un autre gouvernement qui remplirait les conditions exigées pour que les puissances étrangères pussent le reconnaître.

En tout cas, pendant la période révolutionnaire, et en attendant la reconnaissance, les représentants des puissances étrangères sont admis à conférer, en la forme extra-officielle ou officieuse, avec les autorités de fait. Ces tractations ne peuvent cependant porter que sur les questions internationales de peu d'importance qui concernent les gouvernements étrangers ou leurs ressortissants, et pour autant qu'elles se rapportent au territoire occupé par ces dites autorités de fait.

Les agents diplomatiques et consulaires étrangers ont également le droit de conférer extra-officiellement avec les autorités révolutionnaires, pour ce qui concerne la partie du territoire que celles-ci occupent, au sujet de la personne et des propriétés des ressortissants étrangers, et cela, même si le gouvernement établi par le parti contraire avait été officiellement reconnu par les puissances étrangères comme seul légitime pour l'ensemble du pays.

A l'étranger, les agents du gouvernement reconnu sont seuls acceptés, par les gouvernements auprès desquels ils sont accrédités et les tribunaux de ceux-ci, comme représentants de l'État qui les a envoyés.

This same authority thus describes the different kinds of *de facto* governments (pp. 242-43) :

Au point de vue du droit international, on fait une distinction entre les gouvernements de fait, suivant qu'ils ont été reconnus par les puissances étrangères ou qu'ils ne l'ont pas été. Cependant, comme la reconnaissance n'a pas pour effet de rendre le gouvernement de fait viable, mais ne fait que constater les conditions de viabilité, il importe d'appuyer cette distinction sur une base plus large. Comme les puissances étrangères reconnaissent ou refusent de reconnaître le gouvernement de fait, suivant qu'il est ou qu'il n'est pas accepté ou toléré par la majorité de la nation, on aura ainsi deux catégories de gouvernements de fait : ceux dont l'autorité n'est pas contestée actuellement et ceux qui luttent encore pour acquérir cette autorité.

Si l'on se trouve en présence d'un gouvernement de fait appartenant à la première de ces catégories, on constate que l'usurpateur a chassé de leurs places et fonctions ordinaires toutes les autorités

établies conformément au droit traditionnel au constitutionnel. Au contraire, pour les gouvernements de fait de la seconde espèce, le pouvoir de l'usurpateur ne prédomine dans certaines parties du territoire national que grâce aux efforts constants d'une force militaire active. Ces portions du territoire sont généralement placées sous le contrôle direct des autorités militaires, mais elles peuvent aussi être administrées par des fonctionnaires civils désignés par l'usurpateur.

Le gouvernement de Cromwell en Angleterre et celui des Confédérés sudistes aux Etats-Unis sont des exemples typiques de ces deux catégories de gouvernements de fait.

Le but principal poursuivi par les gouvernements de fait et par les usurpateurs est toujours de créer une nouvelle légitimité, destinée à remplacer la légitimité traditionnelle ou constitutionnelle qu'ils ont abolie. C'est pour cette raison qu'on les a nommés des *gouvernements provisoires*.

Lorsque les anciens membres du gouvernement légitime ou leurs successeurs parviennent à renverser à leur tour le gouvernement de fait ou l'usurpateur, on qualifie les autorités ainsi mises de côté de *gouvernement intermédiaire* général ou local.

In the succeeding pages (243 ff.) Dr. Wiese discusses in considerable detail the international validity of acts of what he calls "general intermediary governments."

Dr. Rougier, a French advocate, devotes the fourth part of his excellent work on *Les Guerres Civiles et le Droit des Gens* (1903) to *de facto* governments (pp. 478-560). He distinguishes between what he calls *de facto* governments general (e.g., Dom Miguel, Cromwell, etc.), and *local* (where there are rival claimants). Respecting the recognition of a *de facto* government by third states, he says (pp. 499-501):

La reconnaissance est l'acte par lequel un État étranger déclare considérer le gouvernement nouveau comme le représentant autorisé de la volonté nationale et le dépositaire de l'autorité souveraine, et s'engage à user de son intermédiaire pour toutes les tractations qui auront lieu entre les deux États. Il est essentiel de remarquer que la reconnaissance n'équivaut point à déclarer le nouveau gouvernement légalement constitué au point de vue constitutionnel; cet acte constate seulement que ce gouvernement est en fait le seul organe régulier capable d'exercer les droits dont jouit l'État.

La reconnaissance est le point de départ des relations diplomatiques régulières nouées entre le gouvernement reconnu et les gouvernements des autres États.

La reconnaissance d'un gouvernement de fait ne doit se confondre

ni avec la reconnaissance d'un État, ni avec la reconnaissance de belligérance d'un parti insurgé. . . .

Quant à la reconnaissance des insurgés comme belligérants, elle implique bien que ceux-ci possèdent un organisme politique plus ou moins rudimentaire qualifié de gouvernement, mais elle ne donne pas à ce gouvernement la capacité de représenter la nation. Cette reconnaissance suppose, au contraire, l'existence d'une guerre civile, de deux partis en présence, situation qui oblige moralement les tiers à continuer leurs relations avec l'ancien gouvernement légal.

La reconnaissance est précédée d'une période d'hésitation pendant laquelle le gouvernement tiers entretient avec les nouvelles autorités des relations extra-officielles ou officieuses. Aussitôt qu'il s'est assuré de leur solidité et de leur régularité, il effectue la reconnaissance par lettre autographe, dépêche de chancellerie, déclaration d'ambassadeur ou tout autre procédé.

La reconnaissance ne peut être subordonnée à aucunes conditions déterminées; c'est au gouvernement intéressé qu'il appartient de décider souverainement, d'après les principes du droit, la situation de fait et les nécessités de la politique s'il convient ou non de l'effectuer. Le meilleur critérium est certainement d'examiner si le gouvernement paraît conforme à la volonté de la nation. Si le territoire par lui occupé comprend la totalité ou quasi totalité du territoire de l'État; si son organisation est suffisante pour assurer à ses ressortissants la garantie de tous leurs droits publics et privés; s'il est en état d'exercer la triple fonction exécutive, législative et judiciaire; si l'ancien gouvernement est effondré ou ne conserve plus qu'une autorité nominale; si la guerre civile a pris fin, le nouveau gouvernement peut être hardiment reconnu comme le représentant de l'État.

Des agents diplomatiques sont alors accrédités auprès de lui, et des relations régulières s'établissent entre les deux pays.

The remainder of this section of Rougier's work is devoted to a consideration of the validity of the acts of *de facto* governments, general and local.

Like an oasis in the desert to one seeking for something more or less definite or concrete on this subject from the authorities, appears the following citation from Phillimore (II, p. 23 of 3d ed.):

If the contest be protracted, and there be any appearance of equality between the contending forces, the subsequent conduct of third Powers, intending to remain neutral, cannot be blamed, if they proceed to a virtual recognition of the revolted state; that is to say, if they recognize its commercial flag, and if they sanction the appointment of consuls to the ports of the new state. So far, there is a recognition of its *de facto* existence, fully justified, perhaps indeed

imperatively enjoined, by the duties of the third Power toward its own subjects, and in no way inconsistent, according to the practice of nations, with the continued observance of neutrality between the contending parties.

It was not, however, till after the struggle between Spain and her South American colonies had lasted for many, about twelve, years, that Great Britain accorded this virtual recognition to the latter—righteously, perhaps even too scrupulously, observing the rule of not injuring, even indirectly, the interests of a country with which she was on terms of amity.

There is no proposition of law upon which there exists a more universal agreement of all jurists than upon this, *viz.*, that this virtual and *de facto* recognition of a new state gives no just cause of offense to the old state, inasmuch as it decides nothing concerning the asserted rights of the latter. For, if they be eventually sustained and made triumphant, they cannot be questioned by the third Power, which, pending the conflict, has virtually recognized the revolted state.

Phillimore (*op. cit.*, p. 30) gives the following citation from Mr. Canning's reply to the remonstrance of the Spanish Minister with respect to the recognition (at that time—March 25, 1825—only virtual, he says) by Great Britain of the South American Republics:

The example of the late revolution in France, and of the ultimate happy restoration of His Majesty, Louis XVIII, is pleaded by M. Zea in illustration of the principle of unextinguishable right in a legitimate sovereign, and of the respect to which that right is entitled from all foreign Powers; and he calls upon Great Britain, in justice to her own consistency, to act with the same reserve toward the new states of Spanish America, which she employed, so much to her honor, toward revolutionary France.

But can M. Zea need to be reminded that every Power in Europe, and specifically Spain amongst the foremost, not only acknowledged the several successive governments, *de facto*, by which the House of Bourbon was first expelled from the throne of France, and afterward kept for near a quarter of a century out of possession of it, but contracted intimate alliances with them all; and above all, with that which M. Zea justly describes as the strongest of *de facto* governments—the Government of Bonaparte; against whom not any principle of respect for the rights of legitimate monarchy, but his own ungovernable ambition, finally brought combined Europe into the field?

There is no use in endeavoring to give a specious coloring to facts which are now the property of history.

The undersigned is, therefore, compelled to add, that Great Britain herself cannot justly accept the praise which M. Zea is willing to

ascribe to her in this respect, nor can she claim to be altogether exempted from the general charge of having treated with the Powers of the French Revolution.

It is true, indeed, that, up to the year 1796 she abstained from treating with revolutionary France, long after other Powers of Europe had set her the example. But the reasons alleged in Parliament, and in state papers, for that abstinence, was the unsettled state of the French Government. And it cannot be denied that, both in 1796 and 1797, Great Britain opened a negotiation for peace with the Directory of France—a negotiation, the favorable conclusion of which would have implied a recognition of that form of government; that in 1801 she made peace with the Consulate; that if, in 1806, she did not conclude a treaty with Bonaparte, Emperor of France, the negotiation was broken off merely on a question of terms; and that if, from 1808 to 1814, she steadily refused to listen to any overtures from France, she did so, declaredly and notoriously, on account of Spain alone, whom Bonaparte pertinaciously refused to admit as party to the negotiation.

Nay, further, it cannot be denied that, even in 1814, the year in which the Bourbon dynasty was eventually restored, peace would have been made by Great Britain with Bonaparte, if he had not been unreasonable in his demands; and Spain cannot be ignorant that, even after Bonaparte was set aside, there was question among the allies of the possible expediency of placing some other than a Bourbon on the throne of France.

The appeal, therefore, to the conduct of the Powers of Europe, and even to that of Great Britain herself, with respect to the French Revolution, does not recall abundant instances of the recognition of *de facto* governments; by Great Britain, perhaps later, and more reluctantly, than by others, but by Great Britain herself, however reluctant, after the example set to her by the other Powers of Europe, and specifically by Spain.

Phillimore adds:

The revolution which seated Louis-Philippe upon the throne of France in 1830, and the revolution which ejected him in 1848 and set up a republic, and the revolution which committed the government of that kingdom to the Emperor Napoleon III, were equally recognized by England and by other European Powers.

Sir William Harcourt ("The International Doctrine of Recognition," in *Letters by Historicus*, pp. 3 ff.) points out that certain cases usually cited as instances of recognition (Belgium and Greece) were really examples of intervention dictated by pure considerations of

policy. He cites the recognition of the South American Republics by Mr. Canning as a true case of recognition.

The methods of dealing with the *de facto* governments of Greece and the Latin-American Republics by the British Government, after Mr. Canning became responsible for the foreign policy of England in September, 1822, afford perhaps the best available examples we have of enlightened practice on the part of any European Power.

Though really an example of intervention, the case of Greece is not without interest and importance as a useful precedent. The Greek revolution broke out at the end of March, 1821, and soon attained considerable headway. However, there was little or no sympathy with the Greek insurgents on the part of the reactionary European governments. It was not before July, 1822, that the Powers intervened, but the matter was postponed, owing to the unyielding attitude of Turkey. In August, 1822, Castlereagh died and Canning soon inaugurated a new policy both in respect to Greece and the Latin-American Republics. He began by recognizing Greek belligerency. The Greeks having declared a strict blockade of the ports of Patros and Lepanto, on November 17, 1824, the Ionian Government recognized this "communication from the persons exercising the functions of government in Greece," and ordered that "all ships and boats, of whatever description, bearing the Ionian flag, are to respect the same in the most strict and exact manner." (12 British and Foreign State Papers, 904.) Later, Canning followed up his recognition of Greek belligerency by steps which partook of the character of direct intervention.

The disturbances in the Spanish colonies in America began as early as 1808, but the demand for independence began at a much later time. In October, 1817, the Russian Government urged intervention, but Great Britain declared that she would have no part in attempting to force back the subjects of Spain under the domination of an oppressive government. At Aix-la-Chapelle, in October, 1818, Castlereagh proposed "to intervene in the war between Spain and her American colonies by addressing offers of mediation to the two belligerents," but Russia opposed and rejected this scheme.

On March 8, 1822, President Monroe sent to Congress his celebrated message, recommending the recognition of the revolted Spanish colonies—Mexico, Colombia, Chile, and Buenos Aires. Congress unanimously approved the President's views and appropriated

\$100,000 for the expenses of maintaining diplomatic relations. It may be noted in this connection that for some years prior to recognition of independence, the United States Government had maintained consuls or agents in Latin-America (see Paxson's "Independence of the South American Republics," Ch. 2, *passim*). In 1810 President Madison had sent the Poinsett Mission to Buenos Aires, etc., with the title of "Agent for Seamen and Commerce in the Port of Buenos Aires" which was raised to that of "Consul General" the following year (1811). President Monroe followed the same practice on a larger scale, but he steadily refused to grant *exequaturs* to consuls from South America, holding, on the advice of Secretary Adams, that such action would be tantamount to a recognition of independence.

Great Britain had followed a different policy. She did not send consuls or agents to Latin-America until after recognition by the United States, when Canning adopted a new policy. As early as October, 1823, he sent consuls to all the chief cities in revolt. On June 15, 1824, he authorized the British consul at Buenos Aires to negotiate a commercial treaty with that government. And on January 1, 1824, he notified the Powers that England had decided to recognize the independence of Colombia, Mexico and Buenos Aires. Especially notable among the British missions were those of Colonel Hamilton to Colombia in 1824 and Consul-General Parish to Buenos Aires the same year. (See Paxson's "Independence," etc., pp. 221 ff., and 231 ff.)

In his famous speech of June 15, 1824, in the British Parliament on the "Recognition of the Spanish-American States," Sir James Mackintosh (Misc. Works, pp. 549 ff.) reviewed in detail the progress which had then been made by Great Britain in the recognition of these new states. He (of course, erroneously) claimed that the statute 3 Geo. IV, C. 43, III (1822), providing "that the merchandise of countries in America or in the West Indies, *being or having been a part of the dominions of the King of Spain*, may be imported into Great Britain in ships which are the build of these countries" (this must be the recognition of the "commercial flag" referred to by Phillimore and others) was an acknowledgment of independence," as also the "declaration made in Spain that consuls must be immediately sent to South America." But he may be said to have

demonstrated that virtual or *de facto* recognition had been given by the British Government.

In his opinion in the case of *Thorington v. Smith and Hartley* (8 Wallace, 1, 8-10; 1 Moore's Digest, 41; and Scott's Cases, 53) decided in 1868, Chief Justice Chase makes the following interesting remarks on *de facto* governments:

There are several degrees of what is called *de facto* government.

Such a government, in its highest degree, assumes a character very closely resembling that of a lawful government. This is when the usurping government expels the regular authorities from their customary seats and functions, and establishes itself in their place, and so becomes the actual government of a country. The distinguishing characteristic of such a government is, that adherents to it in war against the government *de jure* do not incur the penalties of treason; and under certain limitations, obligations assumed by it in behalf of the country, or otherwise, will, in general, be respected by the government *de jure* when restored.

Examples of this description of government *de facto* are found in English history. The statute 11 Henry VII, c. 1 (2 British Stat. at Large, 82), relieves from penalties for treason all persons who, in defense of the King, for the time being, wage war against those who endeavor to subvert his authority by force of arms, though warranted in so doing by the lawful monarch. (4 Comm. 77.)

But this is where the usurper obtains actual possession of the royal authority of the kingdom; not when he has succeeded only in establishing his power over particular localities. Being in possession, allegiance is due to him as king *de facto*.

Another example may be found in the Government of England under the Commonwealth, first by Parliament, and afterward by Cromwell as Protector. It was not, in the contemplation of law, a government *de jure*, but it was a government *de facto* in the most absolute sense. It incurred obligations and made conquests which remained the obligations and conquests of England after the restoration. The better opinion doubtless is, that acts done in obedience to this government could not be justly regarded as treasonable, though in hostility to the king *de jure*. Such acts were protected from criminal prosecution by the spirit, if not by the letter, of the statute of Henry the Seventh. It was held otherwise by the judges by whom Sir Henry Vane was tried for treason (6 State Trials, 119), in the year following the Restoration. By such a judgment, in such a time, has little authority. . . .

But there is another description of government, called also by publicists a government *de facto*, but which might, perhaps, be more aptly denominated a government of paramount force. Its dis-

tinguishing characteristics are (1), that its existence is maintained by active military power, within the territories, and against the rightful authority of an established and lawful government; and (2), that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force.

In *Williams v. Bruffy* (1877, 96 U. S. 176, 185-186 and 1 Moore, 44), Mr. Chase also said that *de facto* governments

are of two kinds. One of them is such as exists after it has expelled the regularly constituted authorities from the seats of power and the public offices, and established its own functionaries in their places, so as to represent in fact the sovereignty of the nation. . . . The other kind of *de facto* governments . . . is such as exists where a portion of the inhabitants of a country have separated themselves from the parent state and established an independent government. The validity of its acts, both against the parent state and its citizens or subjects, depends entirely upon its ultimate success. If it fail to establish itself permanently, all such acts perish with it. If it succeed, and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation. Such was the case of the State governments under the old confederation on their separation from the British Crown. Having made good their declaration of independence, everything they did from that date was as valid as if their independence had been at once acknowledged. Confiscations, therefore, of enemy's property made by them were sustained as if made by an independent nation. But if they had failed in securing their independence, and the authority of the King had been reestablished in this country, no one would contend that their acts against him, or his loyal subjects, could have been upheld as resting upon any legal foundation.

The question of recognition of *de facto* governments is involved in several recent British decisions. In the *West Russian Steamship Co. v. The Gagara* (35 The Times L. R. 259) the Court of Appeals of Great Britain was called upon to pass upon the validity of the capture of a ship as prize by the National Council of Esthonia. The *Gagara* had been seized from the Bolsheviks, who in their turn had taken her from the plaintiffs. The case raised the important question

as to the political status of the Provisional Government of Esthonia and its recognition by the British Government, inasmuch as the Esthonian Provisional Government, acting as the executive of the Esthonian National Council, claimed ownership in the vessel.

The British Foreign Office, having been asked for information as to the status of the Esthonian Government, had informed the lower court (Admiralty Division) that "the British, French and Italian Governments had, for the time being, provisionally and with all necessary reservations as to the future, recognized the Esthonian National Council as a *de facto* independent body, and His Majesty's Government had accordingly received a certain gentleman as the informal diplomatic representative of the Esthonian Provisional Government. It was the view of His Majesty's Government, without in any way binding itself as to the future, that the Esthonian Government was such a government as could, if it thought fit, set up a prize court."

In giving judgment (February 14, 1919), Lord Justice Bankes said:

The real question which the Court had to decide was whether the Esthonian National Council was recognized by the government of this country as having the status of a sovereign Power. If that Council was so recognized, it was not disputed that the courts of this country would not allow that government to be impleaded here. That principle was clearly laid down in the cases of *The Parlement Belge* (5 P. D., 197) and *Mighell v. Sultan of Johore* (10 The Times L. R., 115; [1894] 1 Q. B., 149). It was a principle arising from the international comity of nations.

His Lordship considered the letters written by the Foreign Office as being statements which fully recognized the sovereignty of the Esthonian Government, subject to the limitation that the recognition would continue only as long as certain conditions should be complied with. His Lordship read the statements as meaning this—that our own as well as the French and Italian Governments would for the time being provisionally recognize the Esthonian Government as a *de facto* independent government, and that they had accordingly received informal diplomatic representatives.

In the *Dora* and the *Annette* (35 Times L. R. 288) it was held, on the other hand, February 26, 1919, (subject, however, to appeal) by the Admiralty Division on information from the British Foreign Office that there was no evidence that the Provisional Government

of Northern Russia had been even informally recognized by the British Government.

Mr. Justice Hill read the following letter from the Foreign Office:

I am to inform you that the Provisional Government of Northern Russia is composed of Russian groups who do not recognize the authority of the Russian Central Soviet Government established at Moscow. The seat of the government is Archangel, and it extends its authority over the territory surrounding that port and to the west of the White Sea up to the Finnish frontier. As the title assumed by that government indicates, it is merely provisional in nature, and has not been formally recognized either by His Majesty's Government or by the Allied Powers as the government of a sovereign independent state. His Majesty's Government and the Allied Powers are, however, at the present moment coöperating with the Provisional Government in the opposition which that government is making to the forces of the Russian Soviet Government, who are engaged in aggressive military operations against it, and are represented at Archangel by a British Commissioner. The representative of the Provisional Government in London is M. Nabokoff, through whom His Majesty's Government conduct communications with the Archangel Provisional Government.

Though not strictly pertinent to the subject of this article, I include passages from two recent decisions of our Supreme Court as bearing more particularly upon the legal effects of the recognition of the *de facto* government of Carranza in Mexico on October 19, 1915.

In *Ricaud et al. v. The American Metal Co., Ltd.* (this JOURNAL, Vol. 12, p. 417), the United States Supreme Court held on March 11, 1918, that a United States District Court in Texas had jurisdiction in a case involving the claim to ownership of a consignment of lead bullion which had been purchased indirectly from General Pereyra, a commander of the Carranza or so-called Constitutional Army of Mexico, who had seized it from a Mexican mining company in September, 1913.

The court thus stated the first question and answer thereto:

The question is, whether the circumstance that the bullion was seized, condemned and sold under the conditions stated in the question, deprived the court of jurisdiction to go forward and adjudge as to the validity of the title acquired by the seizure and sale by the Carranza forces.

The answer which should be given to this question has been rendered not doubtful by the fact that, as we have said, the revolution

inaugurated by General Carranza against General Huerta proved successful and the government established by him has been recognized by the political department of our government as the *de facto* and later as the *de jure* government of Mexico, which decision binds the judges as well as all other officers and citizens of the government. *United States v. Palmer*, 3 Wheat, 160; *In re Cooper*, 143 U. S. 472; *Jones v. United States*, 137 U. S. 202. This recognition is retroactive in effect and validates all the actions of the Carranza Government from the commencement of its existence (*Williams v. Bruffy*, 96 U. S. 176, 186; *Underhill v. Hernandez*, 168 U. S. 250, 253) and the action of General Pereyra complained of must therefore be regarded as the action, in time of civil war, of a duly commissioned general of the legitimate Government of Mexico.

In *Oetjen v. Central Leather Co.* (this JOURNAL, Vol. 12, p. 421), a case decided on March 11, 1918, involved the question of title to two consignments of hides which had been purchased from General Villa, on January 3, 1914, who had seized them while acting as commander of Carranza forces in the north of Mexico. The Supreme Court took

judicial notice of the fact that since the transactions thus detailed and since the trial of this case in the lower courts, the Government of the United States recognized the Government of Carranza as the *de facto* government of the Republic of Mexico, on October 19, 1915, and as the *de jure* government on August 31, 1917. *Jones v. United States*, 137 U. S. 202; *Underhill v. Hernandez*, 168 U. S. 250. . . .

The conduct of the foreign relations of our government is committed by the Constitution to the Executive and Legislative—"the political"—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision. *United States v. Palmer*, 3 Wheat. 610; *Foster v. Neilson*, 2 Pet. 253, 307, 309; *Garcia v. Dee*, 12 Pet. 511, 517, 520; *Williams v. Suffolk Ins. Co.*, 13 Pet. 415, 420; *In re Cooper*, 143 U. S. 472, 499. It has been specifically decided that "Who is the sovereign *de jure* or *de facto* of a territory is, not a judicial but is a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances." *Jones v. United States*, 137 U. S. 202, 212.

It is also the result of the interpretation by this court of the principles of international law that when a government which originates in revolution or revolt is recognized by the political department of

our government as the *de jure* government of the country in which it is established, such recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence. *Williams v. Bruffy*, 96 U. S. 176, 186; *Underhill v. Hernandez*, 168 U. S. 250, 253. See S. C. 65 Fed. Rep. 577.

To these principles we must add that: "Every sovereign state is bound to respect the independence of every other sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign Powers as between themselves." *Underhill v. Hernandez*, 168 U. S. 250, 253; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347.

Applying these principles of law to the case at bar, we have a duly commissioned military commander of what must be accepted as the legitimate government of Mexico, in the progress of a revolution, and when conducting active independent operations, seizing and selling in Mexico, as a military contribution, the property in controversy, at the time owned and in the possession of a citizen of Mexico, the assignor of the plaintiff in error. Plainly this was the action, in Mexico, of the legitimate Mexican Government when dealing with a Mexican citizen, and, as we have seen, for the soundest reasons, and upon repeated decisions of this court such action is not subject to reëxamination and modification by the courts of this country.

The principle that the conduct of one independent government can not be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign state to be reëxamined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nations."

An editorial in this JOURNAL (Vol. X, p. 366) imparts the following information bearing on the form of recognition by the United States of the *de facto* governments of Carranza in Mexico:

On October 19, 1915, the Secretary of State of the United States sent a note to the Confidential Agent extending recognition to the *de facto* government in Mexico, of which General Venustiano Carranza is the chief executive, and suggesting the reciprocal appointment of diplomatic representatives by the two governments. The

Secretary of State stated on February 12, 1916, that "the said *de facto* government has since been recognized by substantially all the countries of Latin America; also by Great Britain, France, Italy, Russia, Japan, Austria-Hungary, Germany and Spain; and several other countries have recently announced their intention of extending recognition.

Respecting the form of recognition of *de facto* governments, there appears to be very little accessible information. The recognition of belligerency usually occurs indirectly through proclamations of neutrality, but Wiesse (*Le droit international appliqué*, etc., p. 32) says it may be given directly by decree. He cites the recognition by decree of the Cuban insurgents by Peru in 1869 and of the Chilean insurgents by Bolivia in 1891.

On July 3, 1815, the Secretary of the Treasury of the United States directed that merchant vessels belonging to the Spanish provinces in revolt should be admitted at our custom houses (Moore's Digest, I, p. 170); and in 1822 an Act of Parliament was passed (3 Geo. IV, c. 43, III), providing that "any goods or merchandise being of the growth, production or manufacture of any country or place in *America* or the *West Indies*, being or having been a part of the dominions of the King of *Spain*, and which goods or merchandise may at any time be lawfully imported into the United Kingdom in *British* built ships, may be imported into the United Kingdom directly from the place of their growth, production or manufacture, or from those ports in such country or place where such goods or merchandise can only be or have usually been first shipped for transportation, in ships or vessels of the build of the country or place of which such goods or merchandise may be the growth, production or manufacture; or in ships or vessels of the build of the port in such country or place where such goods or merchandise can only be or have usually been first shipped for transportation; and all which ships or vessels shall be wholly owned by the people of such country, place or port, and navigated by the master and three-fourths of the mariners of such country, place or port." (62 Pickering's Statutes, 187.)

Such action as indicated above has been characterized as a recognition of the "commercial flag."

It is a disputed question among the authorities (see, *e.g.*, Hall, 5th ed., p. 88*n* in the negative, and Oppenheim, I, § 428 in the affirma-

tive) whether the appointment and acceptance of consuls implies recognition of independence. A study of the precedents connected with the Spanish-American revolt tends to the conclusion that the mere appointment of consuls only implies *de facto* recognition, whereas the granting of *exequaturs* to consuls would imply full recognition.

Moore makes the following observations based on the documents given in § 73 of his *Digest* (I, p. 235):

That the recognition of a government is not necessarily to be implied from the fact of holding communication, whether oral or written, with it, is a principle of which numerous illustrations may be found in the precedents heretofore discussed, in connection with the recognition of new governments; and the same principle has been seen to be applicable to intercourse with the authorities of new states claiming to be recognized as independent. In the case of new governments, however, a situation usually exists which does not arise in the case of new states. In the latter case special agents are, where there is occasion for them, employed, since the dispatch of a minister to a new state is one of the acts from which its recognition is necessarily implied; but, in the case of a new government, the question of recognition, as a rule, practically concerns only the Powers that have already recognized the state and established regular diplomatic relations with it. There has thus arisen a certain right of diplomatic representation; and the sending of a new minister or the retention of an old one, while it implies continued recognition of the state, does not constitute a recognition of the new government, so long as there is no formal presentation of credentials and communications bear only an unofficial character.

Wiesse (see citation on p. 501, *supra*) remarks that recognition of *de facto* governments may be given by means of an *acte diplomatique*, *lettre autographe*, *depêche de chancellerie*, etc.

In conclusion, it may be said that European governments, at least in the nineteenth century, seem to have been guided in the matter of the recognition of new states or governments almost wholly by considerations of policy or expediency and (perhaps we should add) sympathy with monarchical régimes.

The record shows that in every instance except Poland down to 1850 where any people has claimed independence by right of revolt the right of intervention has been exercised against the will of one or the other party to the dispute. In every instance the only question that has disturbed the intervening Powers has regarded neither

the-right nor the policy so much as the "time and mode" of action. The only difference between the European and American practice was that the United States aimed at moderating or restricting the extreme license of European intervention, and this was the difference which brought the United States nearly into collision with Europe in 1861 and 1862. (Senate Report on Recognition of Cuban Independence, No. 1166, 54th Congress, 2d session, p. 58.)

The practice of the United States, on the other hand, appears to have been governed by mixed motives of expediency, sympathy with democratic movements, and supposed legality.

It would seem from Buchanan's statement on p. 124 of Moore's *Digest* that in his opinion the practice of the United States has been somewhat exceptional in its liberal recognition of *de facto* governments. He says: "The Pope, the Emperor of Russia, and President Jackson were the only authorities on earth which ever recognized Dom Miguel as King of Portugal." (For our recognition of Dom Miguel, see I Moore, pp. 134-136.) Yet it should be noted (p. 125) that President Polk (1848) praises Mr. Rush for having been the first to recognize the *free* government established by the French people, and that in 1851 Mr. Rives, our minister at Paris, felt it did not become him to sanction the successful *coup d'état* of Napoleon III by his presence until after the election.

In 1879 General Blanco was recognized as head of the Government of Venezuela by Brazil, England, France, Germany, Italy and Spain. But the United States deferred its recognition. For Evarts's reasons, see I Moore, pp. 150 ff. It may be noted (p. 161) that in 1889 we hastened to recognize the new *de facto* government of Brazil, apparently because of our sympathy with a republican form of government.

The method of procedure followed by the United States in recognizing new states is briefly set forth in Senate Document No. 40 of the 54th Congress, 2d session (1897). The report and resolution on Mexican affairs addressed to the House of Representatives (June, 1874, by H. W. Davis, see "Speeches and Addresses," pp. 456-471, and House Report No. 129, 38th Congress, 1st session) also contains a review of precedents in recognition of "new governments" by the United States. But these reviews throw little or no light upon the recognition of mere *de facto* governments. Senate Report No. 1160 (Dec. 21, 1896), on Recognition of Cuban Independence, is interest-

ing, but, as in the preceding reports, deals mainly with the recognition of new states.

The United States appears to be the only country in which a more or less definite doctrine of recognition has been developed. For the doctrine and practice of the United States, see especially Moore's *Digest*, I, §§ 53-58, pp. 119-164, in section entitled "Recognition of New Governments," and §§ 72-73 under the caption "Acts Falling Short of Recognition." Dr. Goebell made a careful study of "The Recognition Policy of the United States" (66 Columbia University Studies), but he deals only with the recognition of the independence of new states.

THE POWER OF RECOGNITION

BY CLARENCE A. BEERDAHL

Instructor in Political Science, University of Illinois

"Theoretically," says Hall, "a politically organized community enters of right into the family of states and must be treated in accordance with law, as soon as it is able to show that it possesses the marks of a state."¹ As a matter of fact, however, the existence of international society, the nucleus of which was formed in the sixteenth and seventeenth centuries from European states then organized, has made necessary the formal reception into it of new members. Hence, as the same authority points out, the commencement of a state, in the eyes of international law, dates from its recognition by other Powers. The states already members of international society judge for themselves whether the right to recognition has been earned. Another distinguished authority has said, therefore, that "recognition is the assurance given to a new state that it will be permitted to hold its place and rank, in the character of an independent political organism, in the society of nations. The rights and attributes of sovereignty belong to it independently of all recognition, but it is only after it has been recognized that it is assured of exercising them. Regular political relations exist only between states that reciprocally recognize them. Recognition is therefore useful, even necessary to the new state."²

There are three classes of states that may be thus admitted into the family of nations: (1) states hitherto deemed alien in civilization and ideals, such as Turkey, Japan, and China; (2) states formed by civilized men in hitherto uncivilized countries, such as Liberia; and (3) states formed in consequence of separation from another state.³ Instances of the first two classes are rare and offer little difficulty,

¹ Hall, *International Law* (6th ed.), 82.

² Moore's *Digest of International Law*, I, 72.

³ Lawrence, *Principles of International Law* (6th ed.), 83-89.

since they involve no complications with other Powers. But instances of the third class are common. New states generally come into existence by breaking off from an actually existing state. Even in such cases the act of recognition of the new state is "a normal act, quite compatible with the maintenance of peaceful intercourse with the mother country,"⁴ provided the new community has actually won its contest and successfully maintained its independence and separate existence. Authorities agree, however, that premature recognition is a wrong done to the parent state, that it amounts in effect to an act of intervention, and may properly be considered by the parent state as a cause of war to be resented as such.⁵ It becomes, therefore, of particular importance to discover where the power of recognition rests and how it may be exercised.

According to the best international authority, recognition may take place in these various ways: It may be effected by a formal declaration in a separate and independent document, or by such a declaration included in a convention dealing with other matters as well. It may be accorded, without an express declaration, by merely entering into such relations with the new community as exist only between independent states, such as diplomatic intercourse and treaty negotiations. Finally, recognition may be extended by the official reception of diplomatic agents accredited by the new state, by the despatch of such an accredited agent to it, or even by the grant of an *exequatur* to its consul.⁶

The Constitution of the United States does not expressly mention the power of recognition, nor confer that power in terms upon any one department of the government. It provides, however, that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers, and consuls. . . ."⁷ It further provides that the President "shall receive ambassadors and other public ministers."⁸

Under the latter provision, recognition through the reception of

⁴ Lawrence, *Principles of International Law* (6th ed.), 88.

⁵ Hall, *op. cit.*, 83; Moore's *Digest*, I, 73.

⁶ See Hall, *op. cit.*, 87-88; Lawrence, *op. cit.*, 89-90.

⁷ Constitution, Art. II, Sec. 2, cl. 2.

⁸ *Ibid.*, Sec. 3.

an envoy is clearly the act of the President alone, and it was in this manner that the first recognition of the independence of a foreign government was accorded by the United States. President Washington, following the unanimous advice of his Cabinet,⁹ officially received M. Genet on May 17, 1793, as the minister of the new French Republic, which act was, in the words of Jefferson, "an acknowledgment of the legitimacy of their government."¹⁰ The precedent so established by Washington has been followed in numerous other instances,¹¹ and is, in fact, generally considered the usual and proper way of according recognition to a foreign Power.¹² The term "ambassadors and other public ministers" has been interpreted to mean "all possible diplomatic agents, which any Power may accredit to the United States,"¹³ including "all foreign consular agents, who therefore may not exercise their functions in the United States without an exequatur from the President."¹⁴ Hence the President may accord recognition to foreign Powers through the issuance of such exequaturs, and this method was followed in recognizing the independence of Belgium in 1832, and of several other Powers.¹⁵

Recognition through the despatch of an accredited diplomatic agent to the foreign government has also been extended in numerous instances, notably in the cases of Argentina (Buenos Ayres), Chile, and Mexico in 1823, and of Texas in 1837.¹⁶ In this method, under the constitutional provision mentioned above, the President must have the coöperation of the Senate in confirming his nominations, though even here the act of recognition is primarily the act of the President,

⁹ Jefferson's Writings (*Ford ed.*), VI, 217.

¹⁰ *Ibid.*, 224.

¹¹ Colombia, 1822; Empire of Brazil, 1824; Central American Federation, 1824; Costa Rica, 1851; Nicaragua, 1849; Greater Republic of Central America, 1896; Panama, 1903. Sen. Doc. No. 40, 54th Cong., 2d sess., 2, 4, 5, 11, 12; *For. Rel.* 1903, LXXXIII.

¹² See Sen. Doc. No. 56, 54th Cong., 2d sess., 20.

¹³ Attorney-General Cushing, 7 Op. Atty-Gen., 209.

¹⁴ Corwin, *The President's Control of Foreign Relations*, 46; *cf.* Moore's Digest, V, 15-19.

¹⁵ Venezuela, 1835; New Granada, 1835; Uruguay, 1836; Guatemala, 1844; Dominican Republic, 1866. See Sen. Doc. No. 40, *op. cit.*, 6, 7, 11, 13.

¹⁶ Other instances are those of Peru, 1826; Peru-Bolivian Confederation, 1838; Bolivia, 1848; Honduras, 1853; Haiti, 1862. Sen. Doc. No. 40, *op. cit.*, 4, 6, 7, 11, 12, 13.

since he takes the initial step and the Senate can take no part at all until the President has sent in his nomination.

The method of extending recognition through entering into treaty relations might be supposed to give the Senate a share in such recognition, since treaties cannot be ratified without the advice and consent of the Senate. The President, however, is solely responsible for the conduct of the negotiations. Prior to 1815 the President usually submitted to the Senate for confirmation the names of the commissioners designated to negotiate treaties, and at the same time advised the Senate of the general purpose of the negotiations. Since 1815 the practice has been otherwise, and it has been very exceptional to submit the nominations of negotiators to the Senate.¹⁷ As the mere entering into negotiations with a foreign Power amounts to a recognition of that Power as an independent state, the President is through this means enabled to extend recognition on his own authority alone. It was thus that the Kingdom of Hawaii was recognized in 1826, when Captain Jones was sent to negotiate a treaty with the king, while the provisional government was likewise recognized in 1893 by the negotiation of the treaty of annexation. In similar fashion, recognition was extended to Greece in 1837, Liberia in 1862, Korea in 1868, and to others.¹⁸

A common method of according recognition to a new government brought into existence by the overturn of the old is by merely issuing instructions or new letters of credence to the diplomatic agent already accredited to the old government. The issuance of such instructions and credentials being strictly within the sphere of the President, he has the power also in this way to determine upon the legitimacy of such new governments and the proper time for extending recognition. The various changes in the governments of France illustrate this principle. The Empire of 1804 was recognized through the issuing of new credentials to Mr. Armstrong, the American minister at Paris, and similarly with respect to the Monarchy of 1814. When the Republic was proclaimed February 25, 1848, it was recognized only three days later by the American minister, Mr. Rush, through his delivery of an address of congratulation to the members of the new government. That action was without authority and might have

¹⁷ Crandall, *Treaties: Their Making and Enforcement* (2d ed.), 75-76.

¹⁸ Ecuador, 1838; Salvador, 1849. Paraguay, 1852; Orange Free State, 1871. See Sen. Doc. No. 40, *op. cit.*, 5, 6, 7, 8, 12.

been repudiated by the President, but new letters of credence were sent to Mr. Rush, his course was approved, and gratification was expressed that the United States had thereby been the first to recognize the new republic. The recognition of the second Empire in 1852 was effected by new instructions and a new credence to Mr. Rives, the minister then at Paris, and the Republic of 1870 similarly. The recognition of the Kingdom of Samoa in 1880 and of the Republic of Brazil in 1889 are also examples of recognition accorded in this manner.¹⁹ The most recent example is that of the recognition extended to the revolutionary government of Russia on March 22, 1917, when Ambassador Francis addressed the Council of Ministers as follows:

I have the honor, as the Ambassador and representative of the Government of the United States accredited to Russia, to state, in accordance with instructions, that the Government of the United States has recognized the new Government of Russia, and I, as Ambassador of the United States, will be pleased to continue intercourse with Russia through the medium of the new Government.²⁰

Recognition through some express declaration may be accorded even before entering into any sort of diplomatic treaty, or commercial relations with the Powers so recognized, and in this method, as in all the others, the act of recognition has been the act of the President. Thus the German Empire was recognized by the United States through a letter from the President to the Emperor, March 16, 1871. In like manner, Roumania was recognized as a principality through a letter of August 15, 1878, from the President to Prince Charles, and as a kingdom through the formal congratulations of the President to the King.²¹ The independence of the Kongo Free State was recognized in 1884 through a formal proclamation to that effect issued by Secretary of State Frelinghuysen, acting under the authority of the President, with the advice and consent of the Senate.²²

This method has also been the one most recently used by President Wilson in extending recognition to the new states that have grown out of the great war. Czecho-Slovakia was thus recognized Sep.

¹⁹ Sen. Doc. No. 40, *op. cit.*, 2-3, 4, 14.

²⁰ N. Y. Times Current Hist. Mag., VI, 293.

²¹ Sen. Doc. No. 40, *op. cit.*, 8-9.

²² Text of declaration in Supplement to this JOURNAL, III, 5-6.

tember 2, 1918, through an announcement issued by Secretary Lansing, in which, after reciting that the Czecho-Slovaks had taken up arms against the common enemy and had organized a supreme political authority, it was declared:

The Government of the United States recognizes that a state of belligerency exists between the Czecho-Slovaks thus organized and the German and Austro-Hungarian Empires. It also recognizes the Czecho-Slovak National Council as a *de facto* belligerent government, clothed with proper authority to direct the military and political affairs of the Czecho-Slovaks. The Government of the United States further declares that it is prepared to enter formally into relations with the *de facto* government thus recognized for the purpose of prosecuting the war against the common enemy, the Empires of Germany and Austria-Hungary.²³

The Polish Provisional Government was in like manner accorded complete recognition on January 26, 1919, when Secretary Lansing, by direction of President Wilson, sent a formal declaration to that effect to Paderewski, the Polish Prime Minister and Secretary for Foreign Affairs.²⁴ Similarly, the new state of Jugo-Slavia was recognized on February 7, 1919, when Secretary Lansing issued a formal statement, "welcoming" the union of the Jugo-Slavs;²⁵ Finland was recognized on May 5, 1919;²⁶ while the latest recognition is that of the Armenian Republic on April 24, 1920.²⁷

The uniform practice thus shows that recognition has been in the United States the act of the President, and there can be no question of the President's constitutional right, under his powers to negotiate treaties and to receive and send diplomatic agents, to accord such recognition, the Senate sharing in this right when it is exercised by the despatch of accredited agents.²⁸ The question remains, however,

²³ Official U. S. Bulletin, Sept. 3, 1918.

²⁴ *Ibid.*, Jan. 30, 1919; Pol. Sci. Quar., XXXIV, Supp., 70 (Sept., 1919).

²⁵ N. Y. Times Current Hist. Mag., IX, 492 (Mar., 1919). Secretary Lansing supplemented this statement on Feb. 17th with a message to Dr. Trumbitch, Minister of Foreign Affairs of Serbia and head of the Serbian delegation to the Peace Congress, saying that the United States had decided to recognize "the Union of the Serb, Croat, and Slovene peoples." *Ibid.*, X, 222 (May, 1919).

²⁶ Pol. Sci. Quar., XXXIV, Supp., 128 (Sept., 1919).

²⁷ See statement of Secretary Colby in N. Y. Times, Apr. 25, 1920.

²⁸ Cf. Corwin, The President's Control of Foreign Relations, 71. It should be remarked that the President might appoint a minister to a foreign state during a

whether this power of the President is exclusive, or whether Congress enjoys an independent or concurrent power of recognition, or whether there are circumstances that might at least demand consultation with Congress before extending recognition.

The exclusive power of the President to accord recognition seems not to have been disputed, nor any right of Congress in that regard to have been asserted, until 1811. President Madison, in his message of November 5th of that year, expressed an interest in the revolutionary movements begun in South America,²⁹ which portion of the message was in the House of Representatives referred to a select committee.³⁰ This committee, upon making inquiries, secured from Secretary of State Monroe the information that the provinces of Venezuela had declared their independence in 1810, and that other South American provinces were in a revolutionary state. The committee thereupon, on December 10, 1811, reported a joint resolution as follows:

Whereas, several of the American Spanish provinces have represented to the United States that it has been expedient for them to associate and form federal governments upon the elective and representative plan, and to declare themselves free and independent: Therefore be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That they behold with friendly interest the establishment of independent sovereignties by the Spanish provinces in America, consequent upon the actual state of the monarchy to which they belonged; that, as neighbors and inhabitants of the same hemisphere, the United States feel great solicitude for their welfare, and that, when those provinces shall have attained the condition of nations by the just exercise of their rights, the *Senate and House of Representatives will unite with the Executive* in establishing with them, as sovereign and independent states, such amicable relations and commercial intercourse as may require their legislative authority.³¹

recess of the Senate, and thus accord recognition without the consent of the Senate even by this method. The necessity for a later confirmation of the appointment would not operate as a delay of recognition, nor would a refusal to confirm amount to a withdrawal of recognition—it would merely require an appointment agreeable to the Senate.

²⁹ Richardson, Messages and Papers of the Presidents, I, 494.

³⁰ Annals of Congress, 12th Cong., I, 335.

³¹ *Ibid.*, 428; Am. State Papers, For. Rel. III, 538. Italics throughout are the author's.

There was here no positive assertion of any right with respect to recognition, but the language seems significant as tending towards the assertion of such a right, and at least there was an attempt to convey a promise from Congress of recognition in the future. As a matter of fact, no action was taken on the resolution, and the matter was dropped for several years, probably because of the War of 1812.

By 1817 several more of the South American provinces had declared their independence and were clamoring for recognition, and on October 25th of that year President Monroe, in a memorandum to his Cabinet, submitted the following questions, among others:

Has the Executive power to acknowledge the independence of new states whose independence has not been acknowledged by the parent country, and between which parties a war actually exists on that account?

Will the sending, or receiving a minister, to a new state under such circumstances be considered an acknowledgment of its independence?

Is such acknowledgment a justifiable cause of war to the parent country? Is it a just cause of complaint to any other Power?

Is it expedient for the United States, at this time, to acknowledge the independence of Buenos Ayres, or of any other part of the Spanish dominions in America now in a state of revolt?³²

These questions indicated that the President had some doubts, not only as to the *expediency* of recognition at that time, but also as to the Executive *power* in that regard, and especially under circumstances involving complications with Spain. Though it seems to have been agreed that the Executive was competent to extend recognition, it was also decided that it would be inexpedient to acknowledge the independence of any of the provinces at that time, and this apparently led some members of Congress to conclude that the determination was taken, "professedly to the end that Congress might take the lead in the matter." Some point was also given to this belief by the assertion of the President himself that it was not expedient to take the step "without the certainty of being supported in it by the public opinion, which, if decidedly favorable to the measure, would be manifested by measures of Congress."³³

This somewhat hesitant and uncertain attitude of the President with regard to his own powers probably greatly encouraged the

³² Writings of James Monroe, VI, 31.

³³ Memoirs of John Quincy Adams, IV, 71.

proponents of Congressional rights and authority in respect to recognition. Clay mounted what John Quincy Adams called "his South American great horse," and early in December announced his intention to move the recognition of Buenos Ayres, and probably of Chile, a move concerning which Adams wrote: "Mr. Calhoun pronounced himself most decisively against the measure; I had done the same before, and the President now, after some hesitation, did the same."⁸⁴ The casual references to South American affairs in Monroe's message of December 2, 1817,⁸⁵ brought forth two resolutions in the House, one by Clay, proposing an inquiry to determine what legal provisions might be necessary to insure the neutrality of the United States in the contest between Spain and her colonies, the other by Robertson of Louisiana, calling upon the President for information "relative to the independence and political condition of the provinces of Spanish America." Both resolutions were adopted without opposition,⁸⁶ and indicated at least a growing interest on the part of Congress in the movement for the recognition of the revolted colonies.

These preliminaries paved the way for the first discussion in Congress of the right of recognition, which occurred in 1818. Clay began the contest March 24th, when he moved to insert into the appropriation bill then under consideration a provision for the sum of \$18,000, "as the outfit and one year's salary of a minister to be deputed from the United States to the independent provinces of the River Plata, in South America."⁸⁷ Clay's attention was probably called to the doubtful constitutionality of his measure in that it proposed to recognize the independence of these provinces before the Executive had acted, for on the following day he redrafted the amendment to read as follows: "For one year's salary, and an outfit to a minister to the United Provinces of the Rio de la Plata, *whenever the President shall deem it expedient* to send a minister to the said United Provinces, a sum not exceeding eighteen thousand dollars."⁸⁸ Clay spoke at length for the provision as thus changed. He at first claimed for Congress no exclusive or independent power of recognition, arguing merely that Congress had a *concurrent* power through

⁸⁴ Memoirs of John Quincy Adams, IV, 28.

⁸⁵ Richardson, Messages and Papers, II, 13.

⁸⁶ Annals of Congress, 15th Cong., 1st sess., I, 401-404, 406-408.

⁸⁷ *Ibid.*, 15th Cong., 1st sess., II, 1468.

⁸⁸ *Ibid.*, 1500.

its control over the salaries of ministers. Since to acknowledge the independence of a foreign Power might involve the risk of war with the parent state, he urged the necessity of consultation with the war-making branch before taking such a step, of a "perfect understanding" between the legislative and executive branches. He therefore expressed his conviction that, "without unconstitutional interference with Executive power, with peculiar fitness, we might express in an act of appropriation our sentiments, leaving him to the exercise of a just and responsible discretion."³⁹

In closing the debate, however, Clay quite distinctly claimed for Congress an independent power of recognition. "There are three modes under our Constitution," he said, "in which a nation may be recognized: by the Executive receiving a minister; secondly, by its sending one thither; and, thirdly, *this House unquestionably has the right to recognize in the exercise of the Constitutional power of Congress to regulate foreign commerce.* . . . Suppose, for example, we passed an act to regulate trade between the United States and Buenos Ayres; the existence of the nation would be thereby recognized—as we could not regulate trade with a nation which does not exist."⁴⁰ Others, such as Henry St. George Tucker of Virginia and Holmes of Massachusetts, supported Clay's motion, but did not go so far as Clay in asserting any separate power of recognition in Congress, merely urging the desirability of coöperation between Congress and the Executive in the exercise of a power involving such grave consequences. Mr. Tucker, characterized as "the best authority in the House on such questions,"⁴¹ said of the proposition: "It commands nothing; but it intimates, in a proper and Constitutional manner, the readiness of this House to go hand in hand with the Executive, in the interesting measure of opening an intercourse with the Government of La Plata, by sending and receiving ministers. It is in this way, and in this way only, that I understand the proposition."⁴²

Nevertheless, the measure was attacked as an act of usurpation and an invasion of Executive authority, by such men as Mr. Forsyth

³⁹ Annals of Congress, 15th Cong., 1st sess., II, 1474-1500.

⁴⁰ *Ibid.*, 1616, 1618. For criticism of this proposition, see Sen. Doc. No. 56, 54th Cong., 2d sess., 32-33.

⁴¹ Corwin, *The President's Control of Foreign Relations*, 76.

⁴² Annals of Congress, 15th Cong., 1st sess., II, 1589.

of Georgia, Chairman of the Committee on Foreign Relations and later Secretary of State, Mr. Lowndes of South Carolina, Chairman of the Ways and Means Committee and the acknowledged leader of the House, and Mr. Smyth of Virginia, who probably expressed the sentiments of Clay's opponents when he said:

The Constitution grants to the President, by and with the consent of the Senate, power to appoint ambassadors and public ministers, and to make treaties. According to the usage of the Government, it is the President who receives all foreign ministers, and determines what foreign ministers shall or shall not be received. It is by the exercise of some one of these powers, *in neither of which this House has any participation*, that a foreign Power must be acknowledged. Then the acknowledgment of the independence of a new Power is an exercise of Executive authority; consequently, for Congress to direct the Executive how he shall exercise this power, is an act of usurpation.⁴³

Clay's motion failed on March 28th by a vote of 115 to 45, was renewed March 30th by Mr. Anderson of Kentucky, and again beaten by the same vote,⁴⁴ the House thus definitely refusing at that time to consider itself vested with any powers in regard to recognition.

In spite of this action in Congress, President Monroe still seemed somewhat doubtful as to the exact nature and extent of his powers, and on January 2, 1819, again submitted to his Cabinet the question of recognizing the independence of Buenos Ayres. Mr. Calhoun advised acting in concurrence with Great Britain, clearly practicable only by act of the Executive. Mr. Crawford preferred recognition, not by granting an exequatur to a consul, but by sending a minister, "because the Senate must then act upon the nomination, and thus give their sanction," though he admitted that recognition was strictly within the powers of the Executive alone. Mr. Wirt suggested that the House of Representatives must also concur by assenting to an act of appropriation. John Quincy Adams, however, argued strongly for recognition by the Executive alone. "Instead of admitting the Senate or House of Representatives to any share in the act of recognition, I would expressly avoid that form of doing it which would require the concurrence of those bodies. It was, I had no doubt, by our Constitution, an act of the Executive authority . . . and in this

⁴³ *Annals of Congress*, 15th Cong., 1st sess., II, 1569-1570.

⁴⁴ *Ibid.*, 1646, 1652, 1655.

instance I thought the Executive ought carefully to preserve entire the authority given him by the Constitution, and not weaken it by setting the precedent of making either House of Congress a party to an act which it was his exclusive duty to perform." ⁴⁵ No decision seems to have been reached by the Cabinet as to either the expediency or the mode of extending recognition at that time.

Clay continued to press the matter after his defeat in 1818, and on May 10, 1820, was able to secure the passage through the House, by a small majority, of a resolution "that it is expedient to provide by law a suitable outfit and salary for such minister or ministers as the President, by and with the advice and consent of the Senate, may send to any of the Governments of South America, which have established, and are maintaining, their independence of Spain." ⁴⁶ February 9, 1821, the House defeated another motion by Clay for his \$18,000 appropriation, ⁴⁷ but the next day adopted his resolution expressing deep interest in the success of the Spanish provinces, and assuring cordial support to the President "whenever he may deem it expedient to recognize the sovereignty and independence of any of the said provinces." ⁴⁸

The most pronounced attempt to assert for Congress a distinct right of recognition was made in 1822, when Mr. Trimble of Kentucky, one of Clay's most radical supporters, offered the following joint resolution on January 31st:

That the President of the United States be and he is hereby authorized and requested to acknowledge the independence of the Republic of Colombia; and, by an interchange of accredited ministers, place the political relations of that Government with the United States on an equal footing with those of all other independent nations; and be it further resolved, That such of the Spanish provinces in South America as have established and are maintaining their independence of Spain, ought in like manner to be acknowledged by the United States as free, sovereign, and independent governments.

These resolutions were later (February 11th) referred to the Committee of the Whole, ⁴⁹ and there appear to have been dropped.

⁴⁵ *Memoirs of John Quincy Adams*, IV, 204-207.

⁴⁶ *Annals of Congress*, 16th Cong., 1st sess., II, 2223, 2229-2230

⁴⁷ *Ibid.*, 2d sess., 1071, 1077.

⁴⁸ *Ibid.*, 1081, 1091, 1092.

⁴⁹ *Ibid.*, 17th Cong., 1st sess., I, 854, 982.

Meanwhile, another resolution had been adopted, calling upon the President for information with regard to the governments established in those provinces,⁵⁰ to which Monroe responded by his message of March 8, 1822, stating that, in his opinion, the time had come to recognize these republics, and that he considered it his duty to communicate his sentiments to Congress and to invite attention to the subject, in order that there might be "such coöperation between the two departments of the Government as their respective rights and duties may require."⁵¹ In reply to this invitation from the President, two resolutions were very shortly passed by the House, one proposing that "the House of Representatives concur in the opinion expressed by the President in his message of the 8th of March, 1822, that the American provinces of Spain which have declared their independence, and are in the enjoyment of it, ought to be recognized by the United States as independent nations;" the other instructing the Committee of Ways and Means to report a bill appropriating \$100,000 "to enable the President to give due effect to such recognition."⁵² In accordance with this last resolution, an act was approved May 4, 1822, appropriating \$100,000 "to defray the expenses of missions to the independent nations on the American continent."⁵³

This review of the early discussion and action as to the power of recognition seems to show pretty clearly that, while Congress definitely refused to claim any distinct or separate right to accord recognition, both the President and Congress felt that the legislative body might with propriety advise, and was entitled to be consulted, especially when grave consequences might result from the act of recognition.

In 1836 the same principles were asserted as a result of the controversy over Texas. Texas had formally declared its independence March 2, 1836, and two days later sent commissioners to Washington to ask for recognition. President Jackson was favorable to the cause of Texas, but was cautious about a premature recognition and declined to receive the commissioners.⁵⁴ Congress, however, was impatient at the delay, and action was taken to bring about early recognition.

⁵⁰ Annals of Congress, 17th Cong., 1st sess., I, 825, 828.

⁵¹ Richardson, *op. cit.*, II, 116-118.

⁵² Annals of Congress, 17th Cong., 1st sess., II, 1320, 1382, 1403.

⁵³ *Ibid.*, II, App., 2603-2604.

⁵⁴ Reeves, *American Diplomacy under Tyler and Polk*, 78.

Clay, now Chairman of the Senate Committee on Foreign Relations, presented a report, June 18, 1836, in which it was asserted that there were, under the Constitution, four ways of recognizing a Power as independent: (1) by treaty; (2) *by the passage of a law regulating commercial intercourse*; (3) by sending a diplomatic agent; (4) by the Executive receiving and accrediting a diplomatic representative. The last method, it was said, would be a recognition "as far as the Executive only is competent to make it," while the concurrence of the Senate in its executive character was necessary in the first and third modes, in its legislative character in the second. "The Senate alone, without the coöperation of some other branch of the Government, is not competent to recognize the existence of any Power." The report further went on to say that "the President of the United States by the Constitution has the charge of their foreign intercourse. Regularly he ought to take the initiative in the acknowledgment of the independence of any new Power. . . . If, in any instance, the President should be tardy, *he may be quickened in the exercise of his power by the expression of the opinion, or by other acts*, of one or both branches of Congress."⁵⁵ Believing that the President was tardy in this instance, the committee therefore offered the following resolution: "That the independence of Texas ought to be acknowledged by the United States whenever satisfactory information shall be received that it has in successful operation a civil government capable of performing the duties and fulfilling the obligations of an independent Power," which resolution was adopted unanimously July 1, 1836.⁵⁶ The House adopted a similar resolution on July 4th by a vote of 128 to 20.⁵⁷

President Jackson, curiously enough, took no offense at these resolutions as an interference with the Executive prerogative. He seemed, on the other hand, rather doubtful as to his powers with regard to recognition, and was inclined to thrust some of the responsibility upon Congress. Referring to the Texas situation in his message of December 21, 1836, he spoke of the acknowledgment of a new state as independent as "at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated itself

⁵⁵ Congressional Debates, XII, Pt. II (24th Cong., 1st sess.), 1847-1848.

⁵⁶ *Ibid.*, 1848, 1928.

⁵⁷ *Ibid.*, Pt. IV, 4621. For the report of the House Committee on Foreign Affairs, see Journal of the House of Representatives, 24th Cong., 1st sess., 1218.

from another of which it had formed an integral part and which still claims dominion over it. A premature recognition under these circumstances, if not looked upon as a justifiable cause of war, is *always liable to be regarded as a proof of an unfriendly spirit* to one of the contending parties." He referred to the power of recognition as "a power the exercise of which is equivalent in some circumstances to a declaration of war; a power nowhere expressly delegated, and only granted in the Constitution as it is *necessarily involved in some of the great powers given to Congress*, in that given to the President and Senate to form treaties with foreign Powers and to appoint ambassadors and other public ministers, and in that conferred upon the President to receive ministers from foreign nations." He announced, therefore, that he was "disposed to concur" in the intimations of the above-mentioned resolutions that the expediency of recognizing the independence of Texas should be left to the decision of Congress. He said:

It is to be presumed, that on no future occasion will a dispute arise, as none has heretofore occurred, between the Executive and the Legislature in the exercise of the power of recognition. It will always be considered with the spirit of the Constitution, and most safe, that it should be exercised, *when probably leading to war*, with a previous understanding with that body by whom alone war can be declared, and by whom all provisions for sustaining its perils must be furnished. Its submission to Congress, which represents in one branch the States of this Union and in the other the people of the United States, *where there may be reasonable ground to apprehend so grave a consequence*, would certainly afford the fullest satisfaction to our country and a perfect guaranty to all other nations of the justice and prudence of the measures which might be adopted.⁵⁸

Jackson was thus plainly of the opinion that in cases involving possible international complications, the President should not recognize a new government without the previous assent of Congress. A Senate resolution, offered January 11, 1837, and adopted March 1st, declared that the independence of Texas should be recognized,⁵⁹ while in the House a similar resolution was tabled February 21st.⁶⁰ On February 27th, however, a motion was made to insert a provision in

⁵⁸ Richardson, *op. cit.*, III, 266-267.

⁵⁹ Congressional Debates, XIII, Pt. I, 1013.

⁶⁰ *Ibid.*, Pt. II, 1880-1882.

the appropriation bill "for an outfit and salary of a diplomatic agent to be sent to the independent republic of Texas . . .," to which John Quincy Adams objected "on the ground that the act of recognition had heretofore always been an executive act in this Government. It was the business and duty of the President of the United States, and he was not willing to set the example of giving that recognition on the part of the legislative body without the recommendation of the Executive."⁶¹ The provision was amended by striking out the word "independent," and adding the phrase "Whenever the President of the United States shall receive satisfactory evidence that Texas is an independent Power, and that it is expedient to appoint such a minister," and as so changed was passed as part of the appropriation act.⁶²

It thus appears, as was said in a recent Senate report, "that great care was taken by both Houses not to assume for the legislative branch any power directly to recognize a new foreign government, but that the responsibility was left entirely with the Executive."⁶³ Following the suggestion of the act, however, Jackson, as his last official act, appointed Alcée La Branche of Louisiana as Chargé to Texas, and thus accorded recognition to that country.⁶⁴

In 1864 the Mexican difficulty led to a more positive attempt in Congress to assert a genuine independent power of recognition, and also a more vigorous assertion by the Executive of his powers in that regard. The House of Representatives, April 6, 1864, passed unanimously a joint resolution introduced by Henry Winter Davis, Chairman of the Committee on Foreign Affairs, declaring the unwillingness of Congress to leave the impression that it regarded with indifference the events then transpiring in Mexico, and "that they therefore think fit to declare that it does not accord with the policy of the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European Power."⁶⁵ The French minister having asked for

⁶¹ Congressional Debates, XIII, Pt. II, 2060-2061.

⁶² *Ibid.*, 2064.

⁶³ Sen. Doc. No. 56, 54th Cong., 2d sess., 43.

⁶⁴ Richardson, *op. cit.*, III, 281; Reeves, *op. cit.*, 79.

⁶⁵ Congressional Globe, XXXIV, Pt. II (38th Cong., 1st sess.), 1408.

an explanation of this resolution, Secretary Seward replied that it "truly represents the uniform sentiment of the people of the United States in regard to Mexico," but added:

It is, however, another and distinct question whether the United States would think it necessary or proper to express themselves in the form adopted by the House of Representatives at this time. This is a practical and *purely Executive question*, and a decision of it constitutionally belongs, not to the House of Representatives, nor even Congress, but to the President of the United States.⁶⁶

This attitude of the Executive toward a solemn declaration by the House led Davis, December 15, 1864, to report from the Committee on Foreign Affairs another resolution:

That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, *as well in the recognition of new Powers as in other matters*; and it is the constitutional duty of the President to respect that policy not less in diplomatic negotiations than in the use of the national force when authorized by law, and the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it; and such proposition while pending and undetermined is not a fit topic of diplomatic explanation with any foreign Power.⁶⁷

The resolution was tabled by a close vote, whereupon Davis asked to be relieved from further service on the Foreign Affairs Committee. In the ensuing debate, the members participating all took the side of Davis on the constitutional question except Blaine, who cited the declarations of Jefferson to Genet in 1793 and said that to adopt the principle of this resolution "is to start out with a new theory in the administration of our foreign affairs, and I think the House has justified its sense of self-respect and its just appreciation of the spheres of the coördinate departments of government by promptly laying the resolution on the table."⁶⁸ Davis renewed his resolution on December 19th, it was slightly amended by substituting "executive department" for "President," and in this form was passed with only eight negative votes.⁶⁹ This complete reversal in the attitude of the House is difficult to explain, unless the House had become excited by

⁶⁶ Congressional Globe, XXXIV, Pt. III, 2475.

⁶⁷ *Ibid.*, XXXV, Pt. I (38th Cong., 2nd sess.), 48.

⁶⁸ *Ibid.*, XXXV, Pt. I, 49.

⁶⁹ *Ibid.*, 65, 67.

its further consideration of the phraseology of some of Seward's dispatches; but it can hardly be construed as anything but an attempt to establish the doctrine of the paramount authority of Congress in foreign affairs, including the power of recognition. As far as having any actual effect on the action of the President, the resolution accomplished nothing.

The question of the right of Congress to recognize new states was raised more recently in connection with the struggle of Cuba for independence. Numerous legislative proposals urging the President to extend recognition to Cuba⁷⁰ finally led to an elaborate investigation into the whole subject of recognition by the Foreign Relations Committee of the Senate, the results of which were presented to the Senate by Mr. Hale, January 11, 1897.⁷¹ With regard to the power of recognition, the Committee came to this conclusion: "The recognition of independence or belligerency of a foreign Power, technically speaking, is distinctly a diplomatic matter. It is properly evidenced either by sending a public minister to the government thus recognized, or by receiving a public minister therefrom. The latter is the usual and proper course." The report then pointed out that the reception of an envoy is the act of the President alone, while the sending of a minister is *primarily* the act of the President, since the Senate can take no part at all until the President has sent in his nomination. As to the power of the legislative branch, the report stated that "it can exercise no influence over his step, except very indirectly, by withholding appropriations. . . . Nor can the legislative branch of the Government hold any communication with foreign Powers. The executive branch is the sole mouthpiece of the nation in communication with foreign sovereignties. Foreign nations communicate only through their respective executive departments. Resolutions of their legislative departments upon diplomatic matters have no status in international law. In the department of international law, therefore, *a Congressional recognition of belligerency or independence would be a nullity.*"

⁷⁰ A concurrent resolution recognizing a state of war in Cuba and offering Spain the good offices of the United States for the recognition of Cuban independence, passed the Senate Feb. 28, 1896, by a vote of 64 to 6, and the House April 6th by a vote of 246 to 27. It was ignored, however, by President Cleveland. See Latané, *America as a World Power* 9.

⁷¹ In Sen. Doc. No. 56, 54th Cong., 2d sess.

The Committee in its report emphasized also the dangers involved in the exercise of the power of recognition, since the older nation from which the new had separated might regard such recognition as a *casus belli*. The question whether a nation should recognize another, and thus risk going to war with a third, was stated to be largely a question of expediency, of which the Executive was the best qualified to judge, though it was added that "if a recognition of such independence is liable to become a *casus belli* with some other foreign Power, . . . it is most advisable as well as proper for the Executive first to consult the legislative branch as to its wishes and postpone its own action if not assured of legislative approval. If, on the other hand, the Executive did not consider that the time had arrived to act, expressions of opinion by the legislature should be made with some caution."

In spite of the strong statements in this report, a vigorous attempt was made the next year to bring about a recognition of Cuba through Congressional action. As reported in the Senate, the resolutions of April, 1898, empowering the President to use the military and naval forces for the purpose of intervention in Cuba, contained the declaration "that the Government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of the island." This distinct legislative recognition of Cuba was defeated, however, largely because the function of recognition was considered as belonging to the President, and the declaration was left to read, "That the people of the Island of Cuba are, and of right ought to be, free and independent."⁷² Even this declaration was vigorously attacked as a usurpation of an executive function and as an attempt to make a precedent which ought not to be established,⁷³ although authorities hold that it is not to be regarded as a claim by Congress to the power of recognition.⁷⁴

More recently attempts have again been made to assert for Congress considerable power with regard to recognition. Thus Senator King (Utah), on May 23, 1919, proposed a resolution, "That the government at Omsk, Russia, be recognized as the *de facto* government of Russia, and that steps be taken to establish diplomatic relations with

⁷² Benton, *International Law and Diplomacy of the Spanish-American War*, 98.

⁷³ See speech of Senator Spooner, *Congressional Record*, 55th Cong., 2d sess., App. 290.

⁷⁴ Corwin, *op. cit.*, 80-81; Benton, *op. cit.*, 99.

said Omsk government;"⁷⁵ while Senator Fall (New Mexico), on December 3d, introduced a resolution requesting the President to withdraw recognition from the Carranza Government of Mexico and to sever diplomatic relations with that country.⁷⁶ The former resolution was promptly buried in committee, but the latter was given serious consideration by the Foreign Relations Committee of the Senate and would undoubtedly have been pushed to a vote but for the vigorous protest and assertion of the constitutional powers of the Executive by President Wilson.⁷⁷

There have been several judicial decisions bearing on the power of recognition, all of which have declared the power to be with the "political department" of the government, without in every case indicating whether the executive or legislative department, or both, was meant. Thus in the case of *United States v. Palmer*, decided in 1817,⁷⁸ Chief Justice Marshall said that the courts of the Union "must view such newly constituted government as it is viewed by the legislative and executive departments of the government of the United States," and in other cases the distinction between the two departments has not been carefully drawn.⁷⁹ However, in the case of *United States v. Hutchings*,⁸⁰ decided shortly before the *Palmer* case, Marshall distinctly referred to the right of recognition as belonging to the Executive; and similar positive language was used in the case of *Williams v. Suffolk Insurance Company*, decided in 1839.⁸¹ In other cases the tone of the decision, if not the exact language, shows clearly that the executive department is meant.⁸²

The weight of judicial opinion, therefore, as well as precedent and practice, shows that the power of recognition belongs clearly to the President alone, or to the President in conjunction with the Senate. Although there have been frequent attempts to claim for Congress

⁷⁵ S. Res. 34. Congressional Record, 66th Cong., 1st sess., 154.

⁷⁶ See text of resolution in N. Y. Times, Dec. 4, 1919.

⁷⁷ See his letter to Senator Fall, Dec. 8, 1919. *Ibid.*, Dec. 9, 1919.

⁷⁸ 3 Wheat., 610, 643.

⁷⁹ *Rose v. Himely*, 4 Cranch, 241, 272 (1808); *Gelston v. Hoyt*, 3 Wheat., 246, 324 (1818); *Foster v. Neilson*, 2 Pet., 253, 307 (1829); *Jones v. United States*, 137 U. S., 202, 212 (1890).

⁸⁰ 2 Wheeler's Criminal Cases, 543, cited in Sen. Doc. No. 56, op. cit., 24.

⁸¹ 13 Pet., 415, 420; cf. *Prize Cases*, 2 Black, 635, 670 (1862).

⁸² *Kennett v. Chambers*, 14 How., 38, 46, 50-51 (1852); *United States v. Trumbull*, 48 Fed. Rep., 99, 104 (1891); *The Stata*, 56 Fed. Rep. 505, 510 (1893).

an independent and even a paramount right in regard to recognition, Congress itself has clearly conceded that the act is distinctly an executive function, its own powers being limited to proffers of advice and assistance, and to consultation with regard to the exercise of the right when dangerous consequences might result. This is also the view taken by such an eminent authority as Professor Willoughby, who freely concedes that recognition is an act to be performed by the President, but adds:

It is to be presumed, however, that when the recognition of a status of belligerency or of the independence of a revolutionary government is likely to constitute a *casus belli* with some other foreign Power, the President will be guided in large measure by the wishes of the legislative branch. Upon the other hand, it is the proper province of the Executive to refuse to be guided by a resolution on the part of the legislature, if, in his judgment, to do so would be unwise. The legislature may express its wishes or opinions, but may not command.⁸⁸

⁸⁸ Willoughby, *On the Constitution*, I, 462; *cf.* Corwin, *op. cit.*, 82.

THE DOCTRINE OF THE EQUALITY OF NATIONS IN
INTERNATIONAL LAW AND THE RELATION OF
THE DOCTRINE TO THE TREATY OF
VERSAILLES

BY S. W. ARMSTRONG

Fellow in History, Princeton University, 1919-1920

The Hague Conference of 1907 had for one of its objects the formation of an international court of justice, the decisions of which were to systematize international law and resolve its inconsistencies. Such an international court, the "Court of Arbitral Justice," was approved in principle by the Conference, but failed to be established because the Conference was unable to agree on the composition of the court.

Forty-four nations were represented at the Conference, each nation, save the United States, demanding representation on the court. To have allowed each nation to select a judge for the court, would have been to create, not a court, but a judicial assembly. But any plan which did not allow to every nation, not only representation but equal representation, was vigorously opposed by the smaller nations, which alleged violation of their fundamental rights, basing their argument on the doctrine of the equality of states in international law.¹ The resultant impasse was clearly outlined by Mr. Scott in an address to the Conference as follows:

In international law all states are equal. . . . If it be said that all states are equal, it necessarily follows that the conception of great and small Powers finds no place in a correct system of international law. It is only when we leave the system of law and face brute fact that inequality appears. . . .

In matters of justice there can be no distinction, for every state, be it large or small, has an equal interest that justice be done. If, therefore, a permanent court be constructed upon the basis of abstract

¹ Scott, *The Status of the International Court of Justice*, pp. 38-39, 73-74.

right, equality, and justice, it would follow that each state would sit, of right, within an international tribunal, and we will be confronted with a list of judges,—with a panel, not a court.²

In short, the obstacle which prevented the establishment of an international court of justice in 1907 was the doctrine of the equality of nations in international law. My purpose is to examine this doctrine as defined by certain noted publicists, to attempt a broad formulation of the doctrine, and finally to study the doctrine as applied or disregarded in the Treaty of Versailles.

I.

The essential principles underlying the Grotian system remain the fundamental principles of international law. Such are the doctrines of the legal equality and of territorial sovereignty or independence of states. These fundamental principles, though not clearly stated by Grotius, *underlay his system* and were fully developed by his successors, more especially by Wolff, Vattel, and G. F. de Martens.³

Of these three, let us consider the doctrine as defined by Vattel, who has particular significance for us because of his influence on the founders of our nation. In turn, Vattel's famous work, *The Law of Nations*, published in 1758, shows clearly the influence of the political philosophy of that period.

That nations "are by nature equal and hold from nature the same obligations and the same rights" is derived by Vattel from the theory that "men are by nature equal, and their individual rights and obligations the same, as coming equally from nature" for nations "are composed of men and may be regarded as so many free persons living together in a state of nature." From the analogy that "a dwarf is as much a man as a giant is," Vattel argues that the status of nations in international law is independent of their relative strength, that "a small republic is no less a sovereign state than the most powerful kingdom."

But Vattel is not content with mere equality of sovereignty. "From this equality," he continues, "it *necessarily* follows that what is lawful or unlawful for one nation is equally lawful or unlawful for every other nation." His conclusion is the existence of a "perfect

² Scott, *The Status of the International Court of Justice*, p. 65.

³ Hershey, *The Essentials of International Public Law*, p. 58. In the quotations throughout the article, the italics are those of the author.

equality of rights among nations in the conduct of their affairs and in the pursuit of their policies. The intrinsic justice of their conduct is another matter which it is not for others to pass upon finally; so that what one may do another may do, and they must be regarded in the society of mankind as having equal right."⁴

Among later publicists, we find no one who bases his derivation and definition of the doctrine of equality so firmly as Vattel on the political concepts of the eighteenth century, the state of nature and the social compact. Sir Robert Phillimore seems to have constructed his theory on substantially the same foundation, but not as clearly and in less detail.

Phillimore's position may be outlined as follows: Each state is a member of the universal community and therefore there exists a natural equality among states as among individuals. This natural equality among states follows also as the essential companion of their independence, which is the fundamental right upon which international law is built. The natural equality of states is essential, and is independent of their relative territory, resources and population. Any peculiar privilege claimed by a state on the ground of superior attributes is a derogation from the natural equality of states (and therefore incompatible with a basic principle of international law). Incident to the equality are: (1) the right of a state to protect its subjects wherever they are; (2) the right of a national government to recognition by foreign states; (3) the right of a state to external marks of honor and respect; (4) the right of a state to enter into contracts or treaties with foreign states.⁵

Chronologically the next authority to be considered is Lorimer, but his position is such that we can take it up more profitably below. Accordingly, let us turn our attention to Sir Travers Twiss.

Twiss emphasizes more strongly than does Phillimore the relation between the independence and the equality of states. Indeed, for Twiss the equality of states essentially consists in that their independence is absolute, irrespective of power or weakness—"The Principality of Montenegro is as much an independent state as the Empire of all the Russias." But Twiss concludes, in vein similar to both Vattel and Phillimore, that "It results from this equality, that

⁴ Vattel, *The Law of Nations*, Vol. III, p. 7 (Carnegie Institution ed.).

⁵ Phillimore, *Commentaries upon International Law*, 3d ed., V. I, pp. 216-217, V. II, pp. 45-46.

whatever is lawful for one nation is equally lawful for another, and whatever is unjustifiable in one is equally unjustifiable in the other."⁶

Although there is difference enough between Vattel's carefully derived doctrine and the possession of Twiss that the equality of states is the equality of their independence, the divergence is even wider between Vattel and Wheaton, the latter contenting himself with the assertion that "All sovereign states are equal in the eye of international law, whatever may be their relative power." The only further contribution of Wheaton to our subject is a brief discussion of the ways by which the natural equality of sovereign states may be modified, such as by "positive compact" or by "consent implied from constant usage."⁷

But, in turn, William Edward Hall goes one step farther than Wheaton. Not only does he not derive his system of international law deductively from any basis of political theory or philosophy, but he explicitly rejects the deductive method as unsatisfactory or impracticable. Thus, Hall writes that the rules wherein consists international law "may be considered to be an imperfect attempt to give effect to an absolute right which is assumed to exist and to be capable of being discovered, or they may be looked upon simply as a reflection of the moral development and the external life of the nations which are governed by them." Hall adopts the latter view because of two objections which he considers fatal to the former: (1) "that it is not agreed in what the absolute standard consists;" (2) "that even if a theory of absolute right were universally accepted, the measure of the obligations of a state would not be found in its dictates, but in the rules which are received as positive law by the body of states."⁸

Accordingly, we may not look in Hall for a formulation of the doctrine of the equality of states as basic to his system, but must seek his opinion on the doctrine in scattered passages. The first passage which we find would appear to indicate that Hall opposes the doctrine, for in considering the formative influence of national acts on international law, Hall writes that "There are some states, the usages of which in certain matters must be taken to have pre-

⁶ Twiss, *The Law of Nations Considered as Independent Political Communities*, 2d ed., V. I, pp. 11-12.

⁷ Wheaton, *Elements of International Law*, pp. 49, 247 (3d English ed.).

⁸ Hall, *A Treatise on International Law*, 4th ed., pp. 1-5.

ponderant weight.”⁹ However, subsequent passages may be taken to prove that Hall accepted the orthodox view of the doctrine. Thus, he writes that “The head of the state, its armed forces, and its diplomatic agents are regarded as embodying or representing its sovereignty, or in other words, its *character of an equal and independent being*.”¹⁰ Again, Hall approaches the position of Phillimore and Twiss, in that his theory of intervention is based largely on the “fundamental principle that the right of every state to live its life in a given way is *precisely equal* to that of another state to live its life in another way.”¹¹

We have seen how the doctrine of the equality of states in international law has changed from that of Vattel, of the eighteenth century, who derived his doctrine from political theory and then used the doctrine as a foundation for his system of international law, to that of Hall, of the late nineteenth century, who rejected the deductive method and derived his system from “the moral development and external life of the nations.” It is not for us to criticize the relative merits of these divergent methods; the importance for our subject lies in this growing divergence, in the fact that the interest of publicists in the doctrine of equality as a foundation of international law was waning, so that the doctrine had come to receive but perfunctory or incidental attention. For in the early years of the twentieth century the doctrine of equality seems to have found new strength and to have regained its position as an important principle of international law, the new importance, however, depending on the emphasizing of an implication of the doctrine different from that stressed in the earlier period.

To those publicists whose opinions we have already reviewed the significance of the doctrine of equality was that states must be considered as equals before the law, or, as expressed by Vattel, that “what is lawful or unlawful for one nation is equally lawful or unlawful for every other nation.” But to the publicists of the twentieth century, the important implication of the doctrine is that all nations should have an equal part in the formulation of the law and in the administration of the law, i.e., in the settlement of international affairs by the family of nations. The cause for the new application of the

⁹ Hall, *A Treatise on International Law*, 4th ed., p. 14.

¹⁰ *Ibid.*, p. 174.

¹¹ *Ibid.*, p. 300.

doctrine of equality is to be found in the growing realization of the interdependence of nations, and the attempts of the several nations to provide a rough form of international organization with the functions of legislature and judiciary for international relations. As such attempts may be characterized the Geneva Convention, the Conferences at The Hague, and the London Naval Conference. Already we have seen how The Hague Conference of 1907 failed to establish an international court of justice because the problem of the representation of the several nations on the court could not be satisfactorily solved without infringing the doctrine of equality.

Among the first legal authorities to show the influence of the new tendency of international relations was Oppenheim. With a certain similarity to Vattel, Oppenheim derives the equality of "the member states of the family of nations" from the principle that international law "is based on the common consent of states as sovereign communities." He admits the inequality of the attributes and resources of states, but denies that this detracts from their equality as international persons. As a consequence of this equality, Oppenheim declares that in the settlement of matters by the family of nations, each state has one and only one vote, and that legally, if not politically, the vote of the smallest and weakest state has equal weight with that of the largest and most powerful.

Oppenheim's distinction between the legal and political status of a nation is important and requires further consideration. He admits that inequality exists in the size and strength of nations, and that this inequality of size and strength gives one nation more political power or influence than another. This conclusion is forced on him by the history of Europe in the nineteenth century, during which the disputes that arose were settled by the great Powers, whose arrangements were followed by the rest of the nations. However, Oppenheim contends that the status of the great Powers is merely political and has no basis in law, since the relative position and influence of the nations is not fixed, but continually varies in direct accordance with the variation of their size and strength. This acceptance of the political inequality of nations enables Oppenheim to retain their legal equality.¹²

The same problem which led Oppenheim to distinguish between the legal and political status of nations had evident influence on West-

¹² Oppenheim, *International Law*, 2d ed., V. I, pp. 20, 168-171.

lake. Westlake recognized the historical importance of the doctrine of equality as among the enduring principles of international law. The equality of states, he writes, "consists in the fact that in the received principles and rules of international law, other than those of a ceremonial nature, no distinction is made between great states and small. . . ." But Westlake submits the question whether "the existence in Europe of the great Powers as a separate and recognized class . . . can be reconciled with the equality and independence which international law deems to belong to the smaller Powers. There is no doubt," he continues, "that several times during the nineteenth century the great Powers have by agreement among themselves made arrangements affecting the smaller Powers without consulting them, and with the full intention that those arrangements should be carried into effect, although it has not been necessary to resort to force for that purpose because the hopelessness of resistance in those circumstances has led to an express or tacit, but peaceable, acceptance of the decrees by the states concerned. . . . If each of their (the great Powers') proceedings be considered separately, the ratification subsequently conceded to it by the states affected saves it from being a substantial breach of their equality and independence. . . . But when such proceedings are habitual they present another character. They then carry the connotation of right which by virtue of human nature accretes to settled custom, and the acquiescence of the smaller Powers in them loses the last semblance of independent ratification."¹³

Writing several years after Westlake, Lawrence adopts substantially the same treatment of the problem, though emphasizing the influence of the great Powers in international legislation rather than in international administration. He cites the doctrine of equality as a principle of international law since Grotius, noting only the early implication of the doctrine, namely, the equality of nations before the law. But for Lawrence, as for Westlake, the dominating influence of the great Powers is the obstacle. He argues that since international law depends on custom and consent, and the authority of the great Powers has been acknowledged by the smaller nations for the greater part of a century, the distinction between the political and legal status of nations must be discarded, and the primacy of the great Powers must be recognized by international law. And yet having reached the conclusion that the great Powers have a legal pre-

¹³ Westlake, *International Law*, 2d ed., V. I, pp. 321-322.

dominance in the formation of international law, Lawrence retains the early interpretation of the doctrine of equality, namely "that states must remain equal *before the law* in such matters as jurisdiction, proprietary rights, and diplomatic privileges."¹⁴ We will consider below the question whether Lawrence's position is self-consistent, *i.e.*, whether nations can have equality before the law which have had unequal powers in the formation of the law.

Although following mainly the chronological order of the works of the various authorities, I have postponed consideration of Lorimer's position until the last for the reason that it contrasts strongly with that of the others.

The publicists to whom we have given attention have taken widely variant attitudes toward the doctrine of equality. They have differed in their conceptions of its derivation, of its position in a system of international law, of its implications and significance, and of its validity in relation to present international problems. But all have accorded the doctrine some recognition and granted it a certain value. With these Lorimer appears to differ radically. He maintains that the principle of the equality of states "may now . . . be safely said to have been repudiated by history," as it always was "by reason."¹⁵ He characterizes as "absolute and permanent" impossibilities, "all social and political projects which assume the equality of men or of states, whether as facts already existing, or as objects attainable by human effort."¹⁶ Just as Vattel deduces the equality of nations from the fact that they are composed of equal persons, so Lorimer maintains that the inequality of states is a direct and necessary result of the inequalities of individuals.

Lorimer argues further:

If all that were meant (by the doctrine of equality) were that all states are equally entitled to assert such rights as they have, and that they thus have an equal interest in the vindication of law, the assertion would be true of states, as of citizens and individuals. . . . This, however, is not the meaning of the doctrine at all. If we look into the authorities we shall find that what is meant, though of course by no means consistently maintained, is really what is said—*viz.*, that the *rights* of states are equal in themselves, and not merely the *right of asserting* their rights.¹⁷

¹⁴ Lawrence, *The Principles of International Law*, 6th ed., pp. 268-289.

¹⁵ Lorimer, *The Institutes of the Law of Nations*, V. I, p. 44.

¹⁶ *Ibid.*, V. II, p. 193.

¹⁷ *Ibid.*, V. I, p. 171.

In a later passage, Lorimer takes up the argument again from a slightly different angle: "All states are equally entitled to be recognized as states, on the simple ground that they are states; but all states are not entitled to be recognized as equal states, simply because they are not equal states."¹⁸

From these quotations, Lorimer would appear to have disposed of the doctrine of equality. But in a footnote he writes: "My learned colleague, M. de Martens, appears . . . scarcely to have apprehended my position, and to have supposed that, somehow or other, I objected to or limited equality before the law."¹⁹ In other words, despite his opposition to the doctrine of equality, Lorimer accepts the main corollary which the adherents of the doctrine had advocated up to this time, namely, the equality of nations before the law.

The inconsistency of Lorimer's position can be traced to his failure to analyze correctly the doctrine of equality as asserted by other publicists. His most vehement attack appears to be directed against the doctrine as implying that nations are actually equal, i.e., in respect to their size and strength, an implication that *no one* has ventured to assert. Indeed, it is conceded without question by the other publicists that no such equality exists, but they deny that the inequality of the relative attributes and resources of nations detracts from their equality before the law. Furthermore, when Lorimer asserts that the real meaning of the adherents of the doctrine is that "the rights of states are equal in themselves," he fails to make clear what he means by "rights." If our analysis has been correct, the essential right which the publicists before Lorimer held that nations derived from the doctrine of equality, was that of equality before the law, and this right Lorimer himself concedes. To be sure, since Lorimer wrote, new implications of the doctrine have been introduced, as that nations have equal status in the formation of international law and in the administration of international affairs by the family of nations. The validity of these implications will be examined below.

Having reviewed the opinions of various publicists on the doctrine of the equality of states in international law, we are now in a position to attempt a formulation of the doctrine.

¹⁸ Lorimer, *The Institutes of the Law of Nations*, V. II, p. 260, note.

¹⁹ *Ibid.*

II.

If the doctrine of the equality of nations has any significance for international law today, that significance is far broader than it was in the days of Grotius. For today international law includes more than the mere rules for determining the conduct of nations. Already there have been seen the rudimentary forms of an international legislature—the Geneva Convention and The Hague Conferences; of an international judiciary—the Permanent Court of Arbitration at The Hague; and finally, since the Treaty of Versailles was signed, of an international executive—the League of Nations. If the doctrine of the equality of nations is still valid, it must follow that legally all nations have an equal status in the legislature, in the judiciary, and in the executive, whatever inequality of status there may be politically.

It will be noticed that I have retained Oppenheim's distinction between legal and political status. This is as necessary and as justifiable among nations as it is among the individuals of any nation. The basic principle of democracy is that "All men are created equal." The equality of individuals in a democracy means equal opportunity, equal voice in the government, equality before the law. Accordingly, in our democracy there are no *legal* barriers between classes: high position is as open to the poor as to the rich; the vote of a factory hand in an election is worth as much as that of the owner of the factory; before a court of law a stoker has the same rights and privileges as the president of a university. But this equality is legal, theoretical, if you will. Actually there is inequality of birth, of education, of wealth and of ability, and there is resultant differentiation and graduation of individuals in respect to opportunity, political influence, and, unhappily, position before the law. This inequality must be conceded as obvious and irrefutable, but the fact remains that it does not invalidate the principle of equality.

The same reasoning may be applied in international law. The inequality of the territory, population and resources of nations is no greater than the inequality of the wealth and ability of individuals. Just as this inequality of individuals does not detract from their legal equality, so the inequality of nations need not detract from their equality in international law. But before we can accept the equality of nations in even a legal sense, we must dispose of the argument of Lawrence that, since international law depends on custom

and consent, inasmuch as the authority of the great powers has been acknowledged by the smaller nations for the greater part of a century, the distinction between the political and legal status of nations must be discarded, and the primacy of the great Powers must be recognized by international law. We will consider this argument in connection with an examination of the relative status of nations in the formation and application of international law and in the administration of international affairs by the community of nations.

So long as international law was defined by custom and precedent, it was natural that there should be some states the usages of which should have preponderant weight, for example, that the maritime customs of England should have preponderant influence in the formation of maritime law.²⁰ But although any branch of international law may be defined from the customs of one nation or several nations, it becomes law only when accepted as such by the other nations. In the words of Justice Strong in the case of *The Scotia*:

Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. *Like all the laws of nations, it rests upon the common consent of civilized communities.* It is of force, not because it was prescribed by any superior Power, but because it has been generally accepted as a rule of conduct.²¹

May we not justly deduce from this, without the necessity of distinguishing legal from political status, the equal power of nations in the formation of international law, so far as the law is formed by custom and precedent?

We have noted above the existence of rudimentary forms of international legislation in the Geneva Convention and The Hague Conferences. At The Hague Conference of 1907, the doctrine of the equality of nations was given explicit sanction in that each nation had one vote and only one vote.²² Here appears the necessity of distinguishing legal from political status, for although the voting power of the nations was equal, there was marked inequality in the relative influence of the several nations when exerted for or against specific measures. However, the inequality of influence of the

²⁰ Cf. Hall, p. 14.

²¹ Evans, *Leading Case on International Law*, p. 6.

²² Scott, *The Hague Peace Conferences*, p. 90, from Art. 8 of the rules of Procedure of the Conference.

Powers cannot be held to vitiate their legal equality as evidenced by equal voting power.

Having considered the relative status of nations in the formation of international law, we may turn our attention to the questions of their relative positions before the law and in the application of the law.

Most of the publicists whose opinions we have examined agree that all nations are equal before the law. In the words of Vattel, "What is lawful or unlawful for one nation is equally lawful or unlawful for every other nation." The problem arises here whether nations can be considered to have equal position before the law, if, owing to inequality of political status, they have had unequal influence in the formation of the law. The solution of this problem is that the problem itself is impossible, in that it demands the comparison of the influence of a nation in the formation of the law with its position before the law, the comparison of two utterly distinct functions of government, the legislative and the judicial. Position before the law is independent of relative influence in the formation of the law.

Nations have not only equality before the law, but also equality in the application of the law, that is, in the international judiciary as it exists in the Permanent Court of Arbitration at The Hague. This follows from the composition of the court, for "*Each contracting party selects four persons at the most, of known competency in questions of international law, of highest reputation, and disposed to accept the duties of arbitrator. The persons thus selected are inscribed, as members of the court . . .*"²³ Moreover, the fact that the doctrine of equality was the obstacle which prevented the establishment of the Court of Arbitral Justice by The Hague Conference of 1907, is in itself testimony to the validity of the doctrine.

Here it is necessary to make a brief digression to note that at the present time, when international trade and commerce are of such vast importance, the doctrine of equality must have an economic implication, namely, that on highways or in zones, international or under international control, nations must have equal rights of passage and trade.

Finally, we must consider the relative status of nations in the administration of international affairs. In this connection, we may

²³ Hershey, p. 332 from I Hague Conference (1899), Art. 44.

refer again to Westlake's statement concerning the action of the great Powers in making arrangements affecting the smaller Powers without consulting them, and the express or tacit acceptance of the decrees by the states concerned.²⁴

Here, as adherents of the doctrine of equality, we find cold comfort. The primacy of the great Powers is sanctioned by more than a century of custom, which allows the affirmation not even of a legal equality. For although the acquiescence of the small nations in the decisions of the great Powers may have relieved the former of the necessity of admitting any invasion of the doctrine of equality, it is evident that the invasion took place none the less, inasmuch as their non-acquiescence would not have deterred the great Powers from carrying their decisions into effect. There can be made only one reservation from full admission of the inequality of nations in the administration of international affairs, namely, that until the Treaty of Versailles, the inequality was indefinite, not crystallized or limited by rule or law. But this reservation does not make the inequality less real.

We have now examined in some detail the significance of the doctrine of equality under the present international conditions. Our conclusions may be summarized as follows:

1. Nations have equal status in the formation of international law, although where the law is defined by international legislation, as at The Hague Conference, legal equality is accompanied by inequality of influence.

2. Nations are equal before the law and have equal power in its application by an international judiciary as it exists in the Permanent Court of Arbitration at The Hague.

3. In international administration, the doctrine of equality must give way to the primacy of the great Powers, the reality of which is sanctioned by a century of custom, although it is not yet defined by law.²⁵

We are now in a position to examine the extent to which the doctrine of equality has been applied or disregarded in the Treaty of Versailles.

²⁴ *Supra*, p. 546.

²⁵ In this summary, I have omitted the economic implication of the doctrine of equality because, although necessary, it has not, so far as I know, been explicitly defined.

III.

Before commencing this part of our discussion it is necessary to note one point. At the Peace Conference the position of Germany was comparable to that of a condemned criminal awaiting sentence. The disabilities imposed on Germany by the terms of the Treaty of Versailles must therefore not be considered as infringing the doctrine of equality, for they pertain closely to the nature of penalties for the crimes of Germany during the war. Accordingly, these disabilities are mentioned only so far as they throw light on the relative status of the other nations as defined by the treaty.

Our four divisions of the doctrine of equality may be characterized roughly as legislative, judicial, economic, and administrative. We may pass over the first of these, the legislative, with the observation that the Treaty of Versailles does not alter the processes of making international law. And the second, the judicial, may be dismissed almost as briefly. As an international judiciary, the Permanent Court of Arbitration furnishes an important example of observance of the doctrine of equality in that the nations have equal representation on the court. But the doctrine is entirely disregarded in the only article of the treaty suggesting an international judiciary, namely, that relating to the proposed trial of William II. This article provides that the tribunal to try the former German Emperor shall "be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy and Japan." (Article 227.)

Although our third division, that which may be termed the economic implication of the doctrine of equality, received little if any explicit definition before the war, it is recognized and sanctioned by so many provisions of the treaty that it must henceforth be regarded as firmly established. The most important articles of the treaty which justify this assertion may be enumerated as follows:

A. Mandates and Territory of Members of the League of Nations.

(1) Article 22. "Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will . . . secure equal opportunities for the trade and commerce of other members of the League."

(2) Article 23. "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League . . . will make provisions to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League."

B. International Waterways and the Rhine.

(1) Article 332. "On the waterways declared to be international in the preceding article, the nationals, property and flags of all Powers shall be treated on a footing of perfect equality, no distinction being made to the detriment of the nationals, property or flag of any Power between them and the nationals, property or flag of the riparian state itself or of the most favored nation."

(2) Article 356. "Vessels of all nations, and their cargoes, shall have the same rights and privileges (on the Rhine and Moselle) as those which are granted to vessels belonging to the Rhine navigation, and to their cargoes."

C. Nationals and Property of the Allied and Associated Powers in Germany.

(1) Articles 264-267. These articles provide: (a) that goods, the produce or manufacture of any one of the Allied or Associated States, shall, if imported into, or transported through, Germany, receive from Germany equal treatment with those of any other such State or any other foreign country; (b) that goods exported from Germany to any of the Allied or Associated States shall receive from Germany equal treatment with those exported to any other such State or any other foreign country.

Article 268 provides exceptions from the three preceding articles in favor of Alsace-Lorraine, Poland and Luxemburg. These exceptions must be regarded in the nature of compensation for losses incurred during the war, and therefore do not infringe the doctrine of equality.

(2) Articles 271, 313-321, 323, 326, 327, 365 and 370. These articles provide in general that Germany shall not discriminate against the nationals, property, vessels, rolling stock or aircraft of any of the Allied or Associated Powers in German ports, territorial waters, or inland navigation routes, or in transit across Germany.

(3) Article 276. "Germany undertakes: (a) not to subject the nationals of the Allied and Associated Powers to any prohibition in regard to the exercise of occupations, professions, trade and industry, which shall not be equally applicable to all aliens without exception; . . . (c) not to subject the nationals of the Allied and Associated Powers, their property, rights or interests, including companies and associations in which they are interested, to any charge, tax, or impost, direct or indirect, other or higher than those which are or may be imposed on her own nationals or their property, rights or interests; . . ."

(4) Articles 291 and 294 provide that Germany shall give the Allied and Associated Powers and their nationals all the rights and privileges which she may have granted to Austria, Hungary, Bulgaria or Turkey, or to their nationals by treaties, conventions, or agreements before August 1, 1914, or which she may have granted to non-belligerent states or their nationals by treaties, conventions or agreements since August 1, 1914, so long as those treaties, conventions or agreements remain in force.

D. Free Ports, Free Zones in Ports and the Kiel Canal.

(1) Article 329. Having regard to the facilities for the erection of warehouses or for the packing and unpacking of goods, and to duties on goods to be consumed, in the free zones in German territory, this article provides that "There shall be no discrimination in regard to any of the provisions of the present article between persons belonging to different nationalities or between goods of different origin or destination."

(2) Article 65. "Equality of treatment as respects traffic shall be assured in both ports (Kehl and Strasburg) to the nationals, vessels and goods of every country."

(3) Article 380. "The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of perfect equality."

Article 381. "The nationals, property and vessels of all Powers shall, in respect of charges, facilities and in all other respects, be treated on a footing of perfect equality in the use of the Canal, no distinction being made to the detriment of nationals, property and vessels of any Power between them and the nationals, property and vessels of Germany or of the most favored nation."

We have now reached the final phase of our discussion, the application in the Treaty of Versailles of the doctrine of equality, in so far as the doctrine relates to the relative status of nations in the administration of international affairs. Our conclusion as to this phase of the doctrine was that in international administration, the doctrine of equality must give way to the primacy of the great Powers, the reality of which is sanctioned by a century of custom, although not yet defined by law. This conclusion is modified by the treaty only to the extent that the primacy of the great nations is rendered explicit, is crystallized and defined, not only by the power given them, but by the very words of the treaty. The treaty opens by drawing a distinction between the United States, the British Empire, France, Italy and Japan, which are designated as the Principal Allied and Associated Powers, and Belgium, Bolivia, Brazil, China, Cuba, Ecuador, etc., which are designated as constituting, with the Powers mentioned above, the Allied and Associated Powers. This distinction is retained throughout the treaty. Predominant influence is given to the United States, the British Empire, France, Italy and Japan as permanent members of the Council of the League of Nations, as the Principal Allied and Associated Powers, or as members of the Reparation Commission. Let us consider the power given these nations in the respective capacities.

A. THE COUNCIL OF THE LEAGUE OF NATIONS

The Council consists of representatives of the Principal Allied and Associated Powers, together with representatives of four other members of the League, who are to be selected by the Assembly from time to time at its discretion. With the approval of the majority of the Assembly, the Council either may name additional members of the League whose members shall always be members of the Council, or may increase the number of members of the League to be selected by the Assembly for representation on the Council.²⁶

Under the Covenant of the League of Nations, the powers of the Assembly, in which the representation is far more liberal, are insignificant in comparison with those of the Council. Contrast is first presented in that while "The Assembly shall meet at stated intervals

²⁶ Conditions of Peace, Art. 4, Extract from Congressional Record, 66th Cong., 1st sess., June 9, 1919.

and from time to time as occasion may require,"²⁷ "The Council shall meet from time to time as occasion may require, *and at least once a year.*"²⁸ Again, international disputes are first to be submitted to the Council, which may refer them to the Assembly at the request of either party to the dispute, with the proviso that "a report made by the Assembly, *if concurred in by the representatives of those Members of the League represented on the Council and of a majority of the other Members of the League,* exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute."²⁹ In this connection it is important to note that while Article 4 provides that "Any Member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters especially affecting the interests of that Member of the League," the effect of this is practically nullified by the exclusion of the votes of the representatives of parties to a dispute which is before the Council. Finally, it is significant that the Council has the power to decide whether a dispute between two parties arises "out of a matter which by international law is solely within the domestic jurisdiction" of either party, in which case "the Council shall so report, and shall make no recommendation as to its settlement."³⁰

The additional articles relating to the powers of the Council may be enumerated as follows:

(1) Article 8. The Council shall formulate plans for the reduction of national armaments for the consideration and action of the several governments. "After these plans shall have been adopted by the several governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council."

(2) Article 16. "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, . . . it shall be the duty of the Council . . . to recommend to the several governments concerned what effective military or naval force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

(3) Article 26. "Amendments to this Covenant (the Covenant

²⁷ Conditions of Peace, Art. 8.

²⁹ *Ibid.*, Art. 15.

²⁸ *Ibid.*, Art. 4.

³⁰ *Ibid.*, Art. 15.

of the League of Nations) will take effect when ratified by the Members of the League whose representatives compose the Council and by a majority of the Members of the League whose representatives compose the Assembly."

(4) Part III. Section IV. Annex Chapter II. Paragraphs 16, 17 and 33. The government of the Saar Basin is to be entrusted to a Commission which shall consist of five members *chosen by the Council*, and will include one citizen of France, one native inhabitant of the Saar Basin, not a citizen of France, and three members belonging to three countries other than France or Germany. France and Germany agree that any dispute as to the interpretation of the provisions of the treaty concerning the Saar Basin shall be submitted to the said Commission, and the decision of a majority of the Commission shall be binding on both countries.

(5) Article 80. Germany agrees that the independence of Austria "shall be inalienable, except with the consent of the Council of the League of Nations."

(6) Article 280. The obligations imposed on Germany by Articles 264-270, which concern customs regulations, duties, and restrictions, and by Articles 271-272, which concern shipping, "shall cease to have effect five years from the date of the coming into force of the present Treaty, unless otherwise provided for in the text, or *unless the Council of the League of Nations* shall, at least twelve months before the expiration of that period, decide that these obligations shall be maintained for a further period with or without amendment."

Article 276, which relates to the treatment of nationals of Allied and Associated Powers, "shall remain in operation, with or without amendment, after the period of five years for such further period, if any, not exceeding five years, as may be determined by a majority of the Council of the League of Nations."

(7) Article 378. The stipulations of the treaty in regard to the following subjects may be revised by the Council any time after five years from the coming into force of the present treaty, or may be prolonged beyond that period of five years by the Council:

(a) Ports, waterways and railways (Articles 321-330, 332).

(b) International transport (Articles 365, 367-369).

(8) Part XIII of the treaty relates to the establishment of an International Labor Organization. The organization is to consist

of a general conference of representatives, to be composed of four representatives of each member, and of an International Labor Office, controlled by a Governing Body. Even in this organization, the Council of the League of Nations is given dominant influence, in that of the twenty-four members of the Governing Body, eight are to be nominated by the members which the Council may decide are of greatest industrial importance.³¹

B. THE PRINCIPAL ALLIED AND ASSOCIATED POWERS

1. *In Tchecko-Slovakia and Poland.*

(a) Article 83. "A commission composed of seven members, five nominated by the Principal Allied and Associated Powers, one by Poland and one by the Tchecko-Slovak State, will be appointed fifteen days after the coming into force of the present treaty to trace on the spot the frontier line between Poland and the Tchecko-Slovak State."

(b) Article 86. "The Tchecko-Slovak State accepts and agrees to embody in a treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language or religion.

"The Tchecko-Slovak State further accepts and agrees to embody in a treaty with the said Powers such provisions as they may deem necessary to protect freedom of transit and equitable treatment of the commerce of other nations."

(c) Article 93 provides for the making of treaties between Poland and the Principal Allied and Associated Powers, similar to those to be made between those Powers and Tchecko-Slovakia in accordance with Article 86.

2. *In East Prussia.*

(a) Articles 94-97. The areas bordering on East Prussia, defined in Articles 94 and 96, are each to be placed under the authority of commissions of five, appointed by the Principal Allied and Associated Powers. Plebiscites are to be held in each of the areas, after which, the boundary lines are to be fixed by the Principal Allied and Associated Powers. It is important to note that in fixing the boundaries, the Powers are not bound to follow the wishes of the population as shown by the plebiscite.

³¹ Conditions of Peace, Art. 393.

3. *In Schleswig.*

(a) Article 109. "The said zone (defined in the first clauses of the article) shall immediately be placed under the authority of an International Commission, composed of five members, of whom three will be designated by the Principal Allied and Associated Powers; the Norwegian and Swedish Governments will each be requested to designate a member; in the event of their failing to do so, these two members will be chosen by the Principal Allied and Associated Powers."

(b) Article 110. After the result of the plebiscite in Schleswig is known, the frontier line is to be traced by a Commission of seven, five of whom are to be nominated by the Principal Allied and Associated Powers, one by Germany and one by Denmark.

4. *In Germany.*

(a) Article 118. The Principal Allied and Associated Powers are to decide, in agreement with third Powers where necessary, the measures in accordance with which Germany shall renounce all her rights and titles in territory outside her European frontiers.

(b) The Principal Allied and Associated Powers are to be notified of: (1) the points where the German ammunition is stored (Article 166); (2) the armament of the German forts at the date the treaty comes into effect, the strength of which is not to be exceeded thereafter (Article 167); (3) the location and number of the German factories for the manufacture of war materials, which the Principal Allied and Associated Powers must approve (Article 168); (4) the nature and mode of manufacture of all explosives, toxic substances, and other chemical preparations used by Germany during the war (Article 172); (5) the hydrographical information in the possession of Germany concerning the channels and adjoining waters between the Baltic and North Seas (Article 195).

(c) The Principal Allied and Associated Powers are to determine: (1) the number of mine-sweepers Germany may keep (Article 182); (2) the allowance of arms, munitions and war material for the German fleet (Article 192); (3) the areas of the Baltic which Germany must keep clear of mines (Article 193).

(d) Article 203. "All the military, naval and air clauses contained in the present treaty, for the execution of which a time-limit

is prescribed, shall be executed by Germany under the control of Inter-Allied Commissions especially appointed for this purpose by the Principal Allied and Associated Powers."

(e) Article 433. All German troops in the Baltic Provinces and Lithuania "shall return to within the frontiers of Germany as soon as the Governments of the Principal Allied and Associated Powers shall think the moment suitable, having regard to the internal situations of these territories."

5. *International River Commissions.*

As our last evidence of the powers given the Principal Allied and Associated Powers, it is significant to note the extent to which they are represented on the international commissions for the administration of the Elbe, the Oder, the Danube and the Rhine.

On the International Commission for the Elbe, Great Britain, France and Italy are each to have one representative, on that for the Oder, Great Britain and France are to be similarly represented (Articles 340 and 341). The European Commission of the Danube is to consist only of the representatives of Great Britain, France, Italy and Roumania, and the same nations are each to have one representative on the International Commission for the Danube, the competence of which begins where that of the European Commission of the Danube ends (Articles 346 and 347). Of the nineteen members of the Central Commission of the Rhine, France is to appoint four and in addition the president of the Commission, Great Britain and Italy each two. (Article 355.)

C. THE REPARATION COMMISSION.

1. Part VIII, Annex II, Clauses 2-3. "Delegates to the Commission shall be nominated by the United States of America, Great Britain, France, Italy, Japan, Belgium and Serbia. Each of these Powers will appoint one delegate. . . . On no occasion shall the delegates of more than five of the above Powers have the right to take part in the proceedings of the Commission and to record their votes. The delegates of the United States, Great Britain, France and Italy shall have this right on all occasions. The delegate of Belgium shall have this right on all occasions other than those referred to below. The delegate of Japan shall have this right when questions relating to

damage at sea, and questions arising under Article 260 of Part IX (Financial Clauses) in which Japanese interests are concerned, are under consideration. The delegate of the Serb-Croat-Slovene State shall have this right when questions relating to Austria, Hungary or Bulgaria are under consideration. . . .

"Such of the other Allied and Associated Powers as may be interested shall have the right to appoint a delegate to be present and act as Assessor only while their respective claims and interests are under examination or discussion, but without the right to vote."

2. Article 235. The Reparation Commission shall decide the amount of the installments and the manner of payment of the indemnity, the equivalent of 20,000,000,000 gold marks, to be paid by Germany during 1919, 1920 and the first four months of 1921. Out of this sum shall be met the expenses of such supplies of food and raw materials as the Governments of the Principal Allied and Associated Powers deem essential to enable Germany to meet her obligations for reparation.

3. Part VIII, Annex III, clause 5. The Reparation Commission will notify Germany of the tonnage of merchant ships to be built in German yards for the account of the Allied and Associated Governments.

4. Part VIII, Annex VI, clauses 1, 2 and 4. The Reparation Commission is given the option of demanding from Germany 50% of the dyestuffs and chemical drugs in Germany or under German control on the date of the coming into force of the treaty, and from that date until January 1, 1920, and in any subsequent period of six months until January 1, 1925, of demanding 25% of the German production of any dyestuff or chemical drug.

5. Article 254. The Reparation Commission is to decide what proportion of the German debt shall be borne by each of the nations to which German territory is ceded.

6. Articles 428-430. As a guarantee for the execution of the treaty by Germany, the German territory west of the Rhine, together with the bridgeheads, is to be occupied by Allied and Associated troops for fifteen years from the coming into force of the treaty. If the conditions of peace are faithfully executed, the occupation will be successively restricted at intervals of five years. But, *and in many ways this is the most ominous provision of the Treaty*, "*In case either during the occupation or after the expiration of the fifteen years referred*

to above, the Reparation Commission finds that Germany refuses to observe the whole or part of her obligations under the present Treaty with regard to reparation, the whole or part of the areas specified in Article 429 will be reoccupied immediately by the Allied and Associated forces."

CONCLUSION.

Since Grotius evolved a detailed system of international law, the doctrine of the equality of nations has held an important position. Until the twentieth century, publicists stressed one implication of the doctrine, namely that "What is lawful or unlawful for one nation is equally lawful or unlawful for every other nation." With the growing interdependence of nations and the appearance of rudimentary organs of international government, the doctrine attained broader and deeper significance so that we found certain conclusions justified: (1) Nations have equal status in the formation of international law; (2) nations are equal before the law and have equal power in its application by an international judiciary; (3) in international administration, the doctrine of equality must give way to the primacy of the great Powers.²²

The first implication of the doctrine of equality is neither applied nor disregarded in the Treaty of Versailles, for the treaty does not alter the processes of making international law. The second implication is disregarded in the treaty in that the tribunal to try the former Emperor of Germany is to be composed of but five judges, to be appointed by the United States, Great Britain, France, Italy and Japan. On the other hand, a new implication of the doctrine, one which has not yet received explicit definition, namely, that on highways or in zones, international or under international control, nations have equal rights of passage and trade, was recognized and sanctioned by so many provisions of the treaty that it must be regarded as firmly established.

Finally, the only possible conclusion from the provisions of the treaty relating to the administration of international affairs is that they crystallize the primacy of five nations, the United States, Great Britain, France, Italy and Japan. That primacy is defined by the introductory clauses of the treaty; it is recognized throughout, in that these nations are empowered to administer almost every phase

²² *Supra.*, p. 552.

of international affairs. The Treaty of Versailles entrusts to those nations the peace of Europe, in fact, the peace of the world. The significance of this for our subject is that the doctrine of equality has been abandoned so far as it relates to international administration. Nations had unequal status in the administration of international affairs before the Treaty of Versailles, though the inequality was not yet defined; the treaty provides that definition.

It is almost incredible that the crystallization of the inequality of nations in international administration should not result in the invasion by inequality of the status of nations in the formation and application of international law. Evidence is not lacking that the invasion has already begun. As we have already noted, where international law is defined by international legislation, as at The Hague Conference, legal equality is accompanied by inequality of influence. And, although it has best served our purpose to regard the functions of the League of Nations as primarily administrative, it may be logically contended that certain functions of the League, those relating to the settlement of international disputes, are judicial, and that therefore, since only nine nations are represented on the essential organ of the League, the Council, nations have already unequal status in the application of international law. We can only conclude with Westlake that

We are in the presence of a process which in the course of ages may lead to organized government among states, as the indispensable condition of their peace, just as organized national government has been the indispensable condition of peace between private individuals. The world in which the largest intercourse of civilized men has been from time to time carried on has not always been distributed into equal and independent states, and we are reminded by what we see that it may not always be so distributed.³³

³³ Westlake, V. I, p. 322.

THE UNDERSTANDINGS OF INTERNATIONAL LAW

BY QUINCY WRIGHT

Assistant Professor of Political Science, University of Minnesota

"The preamble of a statute," says Justice Story, "is a key to open the mind of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statute."¹ With a phrase in the preamble, Marshall, Story and Webster unlocked the door to the accepted construction of the United States Constitution.² Perhaps the preamble of the League of Nations Covenant will prove useful for the interpretation of that instrument. Many phrases of the Covenant, such, for instance, as those giving the Council power to "submit," "propose," "advise," "recommend," "take measures," etc., change character entirely according as we interpret them literally, analogically, or in the light of pre-existing international law. To decide which standard to adopt we must get the intent of the drafters, and for this we look to the preamble. The phrase "understandings of international law" seems important in this connection.³

¹ Story, *Commentaries on the Constitution*, sec. 459.

² "We, the People of the United States." See Marshall, C. J., in *McCulloch v. Maryland*, 4 Wheat. 403; Story, J., in *Martin v. Hunter's Lessee*, 1 Wheat. 304; Webster in debate with Hayne, Jan. 26-27, 1830, *Cong. Debates*, 21st Cong., 1st sess., VI, Part. I, pp. 58 *et seq.*; and general discussion, Corwin, *The Doctrine of Judicial Review*, 1914, p. 81; Willoughby, *Constitutional Law*, sec. 20; Watson, *The Constitution of the United States*, 1910, pp. 93 *et seq.*

³ "One is curious to know," says Professor Philip Marshall Brown, "what lay behind the thought of the draftsman who penned the phrase 'understandings of international law.' Did he have any conception of a definite system of law—imperfect to be sure—but in the process of orderly development? Or did he conceive of international law merely as a gentleman's agreement on a par with 'regional understandings' referred to in another part of the Covenant, and other diplomatic, political understandings? The problem is intriguing." (*This JOURNAL*, 13: 739, Oct., 1919.) See also Q. Wright, *American Political Science Review*, 13: 556, November, 1919. The English and French texts of the treaty are printed in Sen. Doc. No. 85, 66th Cong., 1st sess.

I.

"The High Contracting Parties, in order to promote international coöperation and to achieve international peace and security

by the *acceptance* of obligations not to resort to war,

by the *prescription* of open, just and honorable relations between nations,

by the *firm establishment* of the *understandings of international law* as the actual rule of conduct among Governments, and

by the *maintenance* of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations."

"Les Hautes Parties Contractantes, considérant que, pour développer la coopération entre les nations et pour leur garantir la paix et la sûreté, il importe

d'accepter certaines obligations de ne pas recourir à la guerre,

d'entretenir au grand jour des relations internationales fondées sur la justice et l'honneur,

d'observer rigoureusement les *prescriptions du droit international*, reconnues désormais comme règle de conduite effective des Gouvernements,

de *faire régner* la justice et de respecter scrupuleusement toutes les obligations des traités dans les rapports mutuels des peuples organisés,

Adoptent le présent Pacte qui institue la Société des Nations.

Is the term "understandings" intended to characterize international law in general or is it intended to distinguish one portion of international law from other portions? To the writer the latter seems more reasonable, when we notice that part of international law seems to be given a more vigorous sanction in the next line. While the "understandings of international law" are merely to be *firmly established*, "justice . . . in the dealings of organized peoples with one another"⁴ is to be *maintained*.

Let us examine the terminology of this preamble more fully. Consider the four phrases setting forth the means by which the objects of the Covenant are to be attained. Evidently the sanctioning words were selected with great care. "Accept" (*ad capere*, to take for) imports an active engagement of the will of the party,⁵ while "prescribe" (*præ scribere*, to write before) imports a passive appeal to

⁴ This phrase seems synonymous with "unwritten principles of international law." "To ascertain," said Chief Justice Marshall, "that (portion of the law of nations) which is unwritten we resort to the great principles of reason and justice." *Bentzon v. Boyle*, 9 Cranch, 191, 198 (1815).

⁵ "To receive is frequently a passive act; whatever is offered or done to another is received; but to *accept* is an act of choice." (Crabb's English Synonyms.)

the intelligence of the party.⁶ The same is true of the French equivalents "*accepter*" and "*entretenir*." The members of the League actively accept obligations not to resort to war, while they passively agree to observe the open, just and honorable relations prescribed for them. To continue, "*establish*" (*stabilis* from *stare*, to stand) imports a sanction by passive external conditions,⁷ while "*maintain*" (*manus teneo*, to hold by the hand) imports a sanctioning by active external agency.⁸ The French terms "*observer rigoureusement*" and "*faire régner*" give greater emphasis to this distinction. Thus, while the League will merely encourage conditions under which understandings of international law may become established, it will actively maintain justice and a scrupulous respect for treaty obligations.

The "*obligations*" to be accepted by and the "*relations*" to be prescribed for the *members* of the League enjoy a less objective sanction than the "*understandings*" to be established and the "*justice*" to be maintained by the *League*. The first two impose moral obligations, the last two legal obligations.⁹ But as between the last two, clearly the obligations imposed by the last are more objectively sanctioned. They are legal obligations in the strict sense as used by the Austinian jurists, to be enforced by the authority of established judicial bodies,¹⁰ as opposed to legal obligations of the kind imposed by

⁶ "To dictate is a greater exercise of authority than to *prescribe*. To *prescribe* partakes altogether of the nature of counsel, and nothing of command; it serves as a rule to the person *prescribed*, and is justified by the superior wisdom and knowledge of the person *prescribing*." (Crabb.)

⁷ "To institute is always the immediate act of some agent; to *establish* is sometimes the effect of circumstances." (Crabb.)

⁸ "To sustain and support are frequently passive, *maintain* is always active. Sustain and support may also imply an active exercise of power or means which brings them still nearer to *maintain*." (Crabb.)

⁹ See Wright, *Minnesota Law Review*, 4: 33 (December, 1919), *Columbia Law Review*, 20: 145-148 (February, 1920); Bernard, *Four Lectures on Subjects connected with Diplomacy*, London, 1868, p. 164; President Wilson, Statement to Senate Foreign Relations Committee, Aug. 19, 1919, 66th Cong., 1st sess., Sen. Doc. No. 106, pp. 502, 507, 514, 517, 534-535.

¹⁰ Austin, *Jurisprudence*, 4th ed., 1: 79, 88, 2: 510; Holland, *Jurisprudence*, 11th ed., p. 42; Gray, *The Nature and Sources of the Law*, p. 82; Salmond, *Jurisprudence*, p. 9. Austin's emphasis upon the origin of true law in the command of superior authority has not been insisted upon by his successors, but they have followed him in insisting upon its sanction by regular judicial authority backed by the power of the state.

international law in the past, sanctioned largely by habit and custom.¹¹

Although legally the French and English texts of the treaty are equally authentic,¹² the preamble appears to have been first drafted in English,¹³ hence the English text furnishes the better evidence of the actual intent of the drafter. However, the French text emphasizes even more forcibly the same distinctions. Obligations *acceptées* and relations *entretenuës au grand jour* (kept in the open) are less objectively sanctioned than prescriptions *observées rigoureusement*. While justice *faite régner* is the most positively enforced of all.

The progression seemingly intended by these four preamble clauses toward obligations of an increasingly legal character,¹⁴ together with the exactness with which corresponding distinctions are recognized in the body of the Covenant,¹⁵ indicates that the drafters of the Covenant meant by the "understandings of international law" a body of practice and usage to be somewhat less objectively sanctioned than

¹¹ Root, the Sanctions of International Law, this JOURNAL, 2: 451; Lawrence, Principles of International Law, sec. 9; Willoughby, The Legal Nature of International Law, this JOURNAL, 8: 357; Wright, the Enforcement of International Law through Municipal Law in the United States, *U. of Illinois Studies in the Social Sciences*, 5: 12.

¹² Treaty of Versailles, Art. 440.

¹³ *Infra*, note 35.

¹⁴ The four types of obligation may be described as (1) political or pragmatically moral, (2) moral, (3) conventional or quasi-legal, and (4) legal. The first is sanctioned by the will and power of each state, the second by the intelligence and understanding of each state, the third by the intelligence and understanding of all states in the League, and the fourth by the will and power of the community of states or the League of Nations.

¹⁵ Thus "obligations not to resort to war" are *accepted* with reference to wars of conquest (Art. 10) and wars without preliminary attempts at pacific settlement (Art. 12). Principles making for "open, just and honorable relations between nations" are *prescribed* in reference to disarmament (Art. 8), mandatories (Art. 22) and international coöperation (Art. 23). "Understandings of international law are to be *established* as to the sphere of action of the League and the maintenance of peace (Arts. 3, 4, 11), as to just and proper measures for the settlement of non-justiciable disputes (Art. 15) and as to the Monroe Doctrine (Art. 21.) "Justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another" are to be *maintained* by the arbitration or judicial settlement of "disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach" (Art. 13).

principles of justice and treaty stipulations, but somewhat more objectively sanctioned than the obligation to abstain from war and to observe open, just and honorable relations. They conceived, we think, of a body of practice in the twilight zone of law, custom and morality comparable in character to much of international law as it has existed since Grotius¹⁶ and to much of constitutional law as the term is frequently employed in modern states.¹⁷

As throwing further light on the "understandings of international law" it is to be noted that they consist of "rules of conduct among governments," while the justice and respect for treaties required is "in the dealings of *organized peoples* with one another." The latter has to do with relations between states or nations, with international law in the strict sense of the word, or as Holland calls it, "private law writ large."¹⁸ The former, on the other hand, has to do with relations among governments, including presumably both national governments and supra-national organs. It has to do with international organization, rather than with international law in the strict sense. The "understandings of international law" form part of the constitutional law of the world, perhaps requiring greater flexibility than strict international law governing the relations of states.

Thus from the context we gather that "the understandings of international law" consist of that portion of international law not embodied in formal principles of justice, but sanctioned by general assent and dealing especially with the organization of international society.

The term "understanding" might easily lead us far afield, as for instance to Locke's *Essay on the Human Understanding*, to Kant's distinction between reason (*vernunft*) and understanding (*verstand*), Berkeley's distinction between the will and the understanding, and the distinction in King James's Bible between wisdom and under-

¹⁶ *Supra*, note 11.

¹⁷ Careful writers distinguish between constitutional law, constitutional history, and constitutional conventions. (See Dicey, *The Law of the Constitution*, 8th ed., chap. 1, especially pp. 21 *et seq.*) Public law, in the absence of effective international organization, can hardly have the entirely objective sanction of private law because the judge is also a party at interest. The state is both judge and party. The independence of the judicial arm of the government in modern states, however, is usually so carefully protected that decisions on public law are almost as objective as on private law.

¹⁸ Holland, *Studies in International Law*, p. 151, *Jurisprudence*, 11th ed., p. 389.

standing. We will, however, confine ourselves to the dictionaries, which usually agree on four definitions, two having to do with a faculty or power of the mind, and two with the content of mind.

Thus "understanding" may mean "the knowing power in general; intelligence; wit"¹⁹ as when Isaiah speaks of the "spirit of wisdom and understanding;"²⁰ or it may mean "the representative faculty; the power of abstract thought; the logical power"²¹ which Berkeley referred to as "the understanding" in distinction from "the will."²² With these two meanings we are not concerned, except to note that "the understanding" as used by philosophers is a very comprehensive term. If one has "understanding" he has powers of both perception²³ and judgment,²⁴ and has used them to acquire both knowledge and wisdom.²⁵ Though some would make the faculty slightly lower than intellect²⁶ and reason,²⁷ it seems that if "the understand-

¹⁹ Century Dictionary.

²⁰ Isaiah, XI: 2.

²¹ Century.

²² *Infra*, note 28.

²³ "The power of perception is that which we call the understanding." Locke, *Essay on the Human Understanding*, 2: 21, sec. 5.

²⁴ "Understanding may be represented as the faculty of judging." Kant, *Critique of Pure Reason* (Bohn), p. 57.

²⁵ Knowledge seems to be somewhat less than wisdom, as in Tennyson's *Locksley Hall*; "Knowledge comes but wisdom lingers," while wisdom is less than understanding, as in *Proverbs*, IV: 7; "Wisdom is the principal thing; therefore get wisdom; and with all thy getting get *understanding*." Knowledge implies familiarity with things and their properties, wisdom with means and ends; knowledge is theoretical, wisdom practical, *understanding* both. This distinction between the equivalent Latin terms, *scientia*, *sapientia* and *intellectus* was familiar to the scholastics. See Taylor, *The Mediæval Mind*, 1911, 2: 405, 481.

²⁶ "Intellect being a matured state of the *understanding*, is most properly applied to efforts of those who have their powers in full vigor; we speak of *understanding* as the characteristic distinction between man and brute; but human beings are distinguished from one another by the measure of their intellect." (Crabb.)

²⁷ Kant divided the cognitive faculty into the sensibility (*Sinnlichkeit*) which forms intuitions; the understanding (*verstand*) which thinks concepts and judgments; and the reason (*vernunft*) which attains ideas. *Critique of Pure Reason* (Bohn), p. 212. "*Understanding* is discursive and hence based on premises and hypotheses themselves not subjected to reflection, while . . . reason apprehends in one immediate act the whole system, both premise and inference, and thus has complete or unconditioned validity." (Baldwin, *Dictionary of Philosophy and Psychology*, 2: 725.)

ing" is convinced, assent is complete though consent of the will may still be lacking.²⁸

As a content of mind "understanding" may mean "the facts or elements of a case as apprehended by any one intelligence."²⁹ Thus we might say, "America's *understanding* of the Monroe Doctrine differed from England's in 1895." Or it may mean "an agreement between two or more persons, an informal compact."³⁰ For example, the British Official Commentary on the League of Nations Covenant says "At first a principle of American foreign policy, it (the Monroe Doctrine) has become an international understanding."³¹ Clearly the second of these two usages is the one intended in the Covenant. "The understandings of international law" are usages upon which the understanding of all parties concerned has met, even though formal evidence of this concurrence is lacking. It is to be particularly noted that while an "understanding" lacks evidence of consent by the will of the parties, and hence lacks the formal validity of a treaty or contract, it may have an even greater practical validity, because both parties fully "understand" its utility and significance.

Now confusion seems to have arisen from interpreting "understandings" with the first meaning. Professor Brown says, criticising the phrase, "The law of nations is to be regarded first, as not having been clearly understood."³² It is only too clear that portions of international law have been differently understood by different nations.³³ If we think of an "understanding" as "the facts or elements

²⁸ "A spirit," says Berkeley, "is one simple, undivided, active being—as it perceives ideas it is called the *understanding*, and as it produces or otherwise operates about them it is called the will." (Of the Principles of Human Knowledge, sec. 27.) The schoolmen had argued as to the superiority of understanding (*intellectus*) or will (*voluntas*), Aquinas holding for the former and Scotus for the latter. Taylor, *op. cit.*, 2: 440, 515. On the distinction between "assent" and "consent" see Wright, *Minnesota Law Review*, 4: 17 (Dec., 1919).

²⁹ Standard Dictionary. The following definition and illustration from the Century seems about equivalent: "The act of one who understands or comprehends. 'The Children of Issachar which were men had understanding of the times.' I Chron. XII: 32." See also use of "understood" *infra*, note 33.

³⁰ Century.

³¹ Pollock, *The League of Nations*, London, 1920, p. 216.

³² This JOURNAL, 13: 738 (October, 1919).

³³ "The law of nations is in part unwritten and in part conventional. To ascertain that which is unwritten, we resort to the great principles of reason and justice; but, as these principles will be differently *understood* by different nations

of a case as apprehended by any *one* intelligence" we naturally infer that the term "understandings of international law" has reference to this variety of interpretations. Once fix clearly in mind, however, that the term "understandings" is used to signify informal agreements and the criticism disappears. Instead of suggesting that the law of nations has not been understood, it suggests that there is a portion of international law which exists, not in formal treaty or established principle, but merely because it is understood by all nations. The French equivalent "*prescriptions*³⁴ *du droit international*" perhaps suggests usage and custom, rather than intellectual conviction, as the source of this portion of international law.

Fortunately, we are not confined to textual interpretation and abstract definition. There seems to be at hand more concrete evidence of the intent of the drafter of the preamble of the Covenant. Apparently this phraseology was the work of President Wilson.³⁵

under different circumstances, we consider them as being, in some degree, fixed and rendered stable by a series of judicial decisions. The decisions of the courts of every country, so far as they are founded upon the law common to every country, will be received, not as authority, but with respect. The decisions of the courts of every country show how the law of nations, in the given case, is *understood* in that country, and will be considered in adopting the rule which is to prevail in this." (Marshall, C. J., in *Bentzon v. Boyle*, 9 Cranch 191, 198, 1815.)

³⁴ The French term *prescription* as here used is practically equivalent to the English term as used in law. But this usage must be distinguished from the usage in an earlier phrase of the English text of the preamble. In English, prescription may mean something accepted because of the superior knowledge of the prescriber, as a physician's prescription (see *supra*, note 6), or it may mean something accepted because of the passage of time, as a title to land obtained by long possession.

³⁵ During the Senate hearings on September 19, 1919, the following colloquy took place:

"Senator Knox. Do you have a copy of the President's original proposition for a league of nations with you?

Mr. William C. Bullitt (Chief of Division of Current Intelligence Summaries on Peace Mission). I have, sir.

Senator Knox. Will you produce it?

Mr. Bullitt. I have this in two forms. I happen to have a rather curious document here, which I hope may be returned to me, inasmuch as it is a unique copy. It is the President's original proposal, written on his own typewriter, I believe, which was presented to me on January 10 (1919) by Col. House, with an inscription on the top of it."

The preamble of the document referred to is as follows:

"In order to secure peace, security, and orderly government by the prescrip

I quote from his *Constitutional Government in the United States* given as lectures at Columbia University in 1907 and published in 1908.

That was the beginning of constitutional government, and shows the nature of that government in its simplest form. There at Runnymede a people came to an *understanding* with its governors, and established once for all that ideal of government which we now call "constitutional"—the ideal of government conducted upon the basis of definite *understanding*, if need be of a formal pact, between those who are to submit to it and those who are to conduct it, with a view to making government an instrument of the general welfare rather than an arbitrary self-willed master, doing what it pleases,—and particularly for the purpose of safeguarding individual liberty. (p. 3.)

Our own legislatures were of the same character and origin. Their liberties and functions grew by similar processes, upon similar *understandings*, out of the precedents and practices of colonial laws and charters and the circumstances of the age and place. (p. 13.)

We may summarize our view of constitutional government by saying that its ultimate and essential objects are: . . . 3d. To put into the hands of every individual, without favor or discrimination, the means of enforcing the *understandings of the law* alike with regard to himself challenging every illegal act that touches him. (p. 24.)

Only in the courts can the individual citizen set up his private right and interest against the government by an appeal to the fundamental *understandings* upon which the government rests. In no other government but our own can he set them up even there against the government. (p. 143.)

Throughout these lectures I have described constitutional government as that which is maintained upon the basis of an intimate *understanding* between those who conduct government and those who obey it. (p. 183.)

Constitutional government can be vital only when it is refreshed at every turn of affairs by a new and cordial and easily attained *understanding* between those who govern and those who are governed. (p. 222.)

tion of open, just, and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, the powers signatory to this covenant and agreement jointly and severally adopt this constitution of the league of nations."

The only changes in the preamble as finally adopted are an alteration in the opening phrase; addition of the phrase "by the acceptance of obligations not to resort to war;" omission at the end of the words "jointly and severally," and substitution of "High contracting parties" for "powers signatory to this covenant," of "agree" for "adopt" and of "covenant" for "constitution." (66th Cong., 1st sess., Sen. Doc. No. 106, pp. 1164-1165.)

Evidently President Wilson liked the term "understandings." In the index of this book it is made a special subject, followed by twenty-one page references. It is the essential element in his definition of constitutional government. We might almost call it the keynote of this whole book.

It is interesting to notice that in *Congressional Government*, published in 1885, President Wilson showed no such fondness for the term. It does not appear in the index, and I find it only once in the text. On page 238 the practice of senatorial courtesy is referred to as "an understanding" which "grew up within the privacy of executive sessions" where "there was the requisite privacy to shield from public condemnation the practice arising out of such an understanding." This association of the term with secrecy and underhandedness has disappeared in the President's conception of 1907. Evidently it was after 1885 that the general utility of the term appealed to him.

While *Congressional Government* was being printed in America, *The Law of the Constitution* by A. V. Dicey was being printed in England. A few quotations from this widely known book will be pertinent.

The truth is that both Bagehot and Professor Hearn deal and mean to deal mainly with political *understandings* or conventions³⁶ and not with rules of law. (p. 20.)

The authors who insist upon and explain the conventional character of the understandings which make up a great part of the constitution, leave unexplained the one matter which needs explanation. They give no satisfactory answer to the inquiry how it happens that the *understandings* of politics are sometimes at least obeyed as rigorously as the commands of law. . . . Meanwhile it is certain that *understandings* are not laws, and that no system of conventionalism will explain the whole nature of constitutional law, if indeed "constitutional law" be in strictness law at all. (p. 21.)

The rules which make up constitutional law, as the term is used in England, include two sets of principles or maxims of a totally distinct

³⁶ The term "conventions," here used synonymously with "understandings," has become more familiar and has been adopted by such writers as Anson (*Law and Custom of the Constitution*, 1: 76), and Lowell (*The Government of England*, 1: 10-11). It must, of course, be distinguished from the use of the term "convention" in international law as practically synonymous with "treaty." The two usages are in a sense opposed. "Conventional international law" is written, as opposed to the unwritten "customary international law;" whereas "conventions of the constitution" are for the most part, but not necessarily, unwritten.

character. The one set of rules are in the strictest sense "laws" since they are rules which (whether written or unwritten, whether enacted by statute or derived from the mass of custom, tradition or judge-made maxims known as the Common Law) are enforced by the courts; these rules constitute "constitutional law" in the proper sense of that term, and may for the sake of distinction be called collectively "the law of the constitution." The other set of rules consist of conventions, *understandings*, habits, or practices which, though they may regulate the conduct of the several members of the sovereign power, of the Ministry, or of other officials, are not in reality laws at all since they are not enforced by the courts. This portion of constitutional law may, for the sake of distinction, be termed the "conventions of the constitution," or constitutional morality. (p. 23.)

Although it seems probable that President Wilson took the term understandings from Dicey, to whose work he refers in *Constitutional Government* (p. 147), it must be noticed that he has slightly varied its significance. Instead of contrasting "understandings," which are not sanctioned by the courts, with "laws," which are, he indicates that understandings may be, and in the United States are, enforced by the courts. Also he refers primarily to understandings between government and governed while Dicey writes of understandings between various branches of government. With both writers, however, the essence of an understanding is its origin in agreement or assent and its flexibility. It is to be distinguished, on the one hand, from commands of superior authority and, on the other, from formal and inflexible rules and principles.

Is the term "understandings" properly applicable to any portion of international law? So far as the term emphasizes origin in agreement, it but asserts the accepted opinion as to the source of all international law.⁸⁷

The American Supreme Court has said:

Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the law of nations,

⁸⁷ Doubtless, principles of international law are based on consent of the wills as well as assent of the understandings of the parties. Thus, even though all states have agreed upon the theoretical excellence of a rule, the rule is not international law unless they have also signified expressly or tacitly a willingness to be bound by it. General acceptance of a treaty "in principle" does not make the treaty law, though it may make it an understanding. See, also, *supra*, note 28.

it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, but because it has been generally accepted as a rule of conduct.³⁸

So also the British High Court of Justice:

It is quite true that whatever has received the *common consent* of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant.³⁹

Text writers are in accord. Thus Vattel:

These three divisions of the law of nations, the voluntary, the conventional, and the customary law, form together the positive law of nations, for they all proceed from the *agreement* of nations; the voluntary law from their presumed consent; the conventional law from their express consent; and the customary law from their tacit consent. And since there are no other modes of deducing a law from the agreement of nations, there are but these three divisions of the positive law of nations.⁴⁰

W. E. Hall says:

States are independent beings subject to no control, and owning no superior. . . . If therefore states are to be subject to anything which can either strictly or analogically be called law, they must accept a body of rules by *general consent* as an arbitrary code irrespectively of its origin, or else they must be agreed as to the general principles by which they are to be governed.⁴¹

And Professor Brown, in the article referred to, commends our "Anglo-Saxon conceptions of a solid system of law that has grown up by custom and *consent*."

³⁸ *The Scotia*, 14 Wall. 170 (1871). See also *Bentzon v. Boyle*, *supra*, note 33; *The Paquette Habana*, 175 U. S. 677 (1899).

³⁹ *West Rand Central Gold Mining Co. v. Rex*, L. R. (1905), 2 K. B. 391. See, also, *Regina v. Keyn*, L. R. (1876), 2 Ex. D. 63.

⁴⁰ Vattel, *The Law of Nations*, Introduction, sec. 27. Vattel recognizes a fourth type of international law, "the necessary law of nations," founded on natural law or pure reason. *Ibid.*, sec. 7. See, also, Grotius, *De Jure Belli ac Pacis*, *Prolegomena*, sec. 40. ⁴¹ Hall, *International Law*, 7th ed., p. 4.

The emphasis by the term "understandings" upon the accepted view of the source of international law in agreement and assent seems important to the writer. Especially so with reference to that part of international law having to do with international organization. There is concern in certain quarters lest the League of Nations become a Holy Alliance, dictating international law for weaker nations. Such a transfiguration of international law seems to have been contemplated by certain German jurists during the war. Wrote Josef Kohler in 1915:

An international law based on international treaties can no longer be. International law is . . . a science which draws its guiding principles from the observation of life and its rational culture aims, forms them into conceptions and out of the conceptions constructs the particulars of law. This is German science, for German science alone has been able to work in a systematic fashion. We must test the means which may be suitable; we must make the best choice and in this we must of course consult the expert. Science acts here as legislator. . . . Naturally international law needs its sanction just as every branch of law does, but we shall as I hope be so vastly fortified by our victorious war that we can undertake the protection of international law just as centuries ago the Lombard Dante invoked the German Emperor as the protector of law and the shield of justice.⁴²

An assertion that the League of Nations is to be based, not on arbitrary authority, but on *understandings* among all parties concerned would seem appropriate in view of these fears and proposals.

The implication of flexibility carried by the term understanding raises an issue upon which opinions are more likely to differ. We have noticed the apparent intention of the Covenant to maintain principles of justice and treaties "in the dealings of organized peoples with one another," as distinguished from the intention to "firmly establish the understandings of international law as the actual rule of conduct among governments." Is it desirable that this distinction should be preserved? Would it not be better to draft the whole of international law and international organization as permanent immutable rules and principles?

There has been much discussion as to whether the time has arrived for formal codification of even recognized principles of international law. Some think that, as with the common law and with the Roman

⁴² Kohler, *Zeitschrift für Völkerrecht*, 9: 5, trans., *Michigan Law Review*, 15: 635-638.

law in the great days of Ulpian and Papinian, international law should continue to develop from precedent to precedent rather than by definition in treaty or code. Premature definiteness is likely to suggest means of violating the spirit within the letter.⁴³

However that may be of established portions of international law, certainly those portions relating to international organization are not yet ready for codification. Many writers find flexible constitutions better than rigid constitutions, even in long-established states.⁴⁴ Cer-

⁴³ See Baty, *U. of Penna. Law Review*, 63: 703 (June, 1915); Wright, "The Legal Nature of Treaties," this JOURNAL, 10: 707 (Oct., 1916).

⁴⁴ Bagehot, *The English Constitution*, N. Y., 1893, p. 98; Bryce, *Studies in History and Jurisprudence*, 1: 139, *et seq.*; Dicey, *The Law of the Constitution*, 8th ed., pp. 122 *et seq.* American writers are inclined to resent the charge that their constitution is excessively "rigid." (*Infra*, note 45.) In the narrow sense the distinction between a rigid and a flexible constitution depends upon the ease of amendment, *i.e.*, the difference between the process of constitutional amendment and the process of ordinary legislation. The distinction, however, may be given a broader application, not to the constitution as a written document, but to the constitution considered as the entire body of rules, principles and conventions governing the organization and activity of the government. In this sense a constitution becomes more rigid as the provisions of the written constitution become more detailed. The formal document may be very difficult to amend, yet the constitution, in the broader sense, may be exceedingly flexible, provided the formal document is confined to the barest outlines of organization, leaving details to be filled in by legislative, executive, administrative or judicial interpretation and practice. Thus, the flexibility of a constitution varies not only with the ease of amendment, but also with the generality of expression and the degree of discretion allowed the interpreting authorities. Where, as on the continent of Europe, constitutions are usually left to the interpretation of the political departments of government, they may change sporadically according to the whims of politics, though it must be noticed that administrative courts have tended to assume an increasingly judicial character and to extend their control of public law at the expense of purely political organs. Where, as in the United States, much of the constitution is interpreted by the ordinary courts, the constitution is likely to change slowly but continually. "I recognize," says Justice Holmes, "that judges do and must legislate. But they can do so only interstitially. They are confined from molar to molecular motions." (*Southern Pacific v. Jensen*, 244 U. S. 205, 1917.) Where, as in England, a sharp distinction exists between the law and the conventions of the constitution, some portions, especially those dealing with the guarantees of individuals against the government, change slowly by judicial law-making and infrequent acts of parliament, while the conventions dealing especially with the relations of cabinet, Lords and Commons, change more rapidly with the play of party politics. (See Munro, *The Government of the United States*, New York, 1919, p. 59.)

tainly the world organization just a-borning would soon strangle in a rigid constitution. The drafters of the Covenant wisely saw that the organization of the League could only be prescribed in the barest outlines. The functions, procedure and powers of its organs and their relation to national governments must be free to develop by "understandings," as has the English Constitution for the past thousand years.⁴⁵

⁴⁵ The successful creation of a "rigid" constitution for the United States in 1787 may be thought to discredit this opinion. America, however, was much further advanced in organization in 1787 than is the world in 1920. Nor is it true that the constitution "was struck off at one time by the brain and purpose of man." In the main it simply formulated established British and colonial practices. Finally, we may question whether the constitution has in fact proved particularly "rigid" since 1787. Elucidation of its flexibility after the manner of Bagehot's analysis of the British constitution may be described as the thesis of President Wilson's discussions of American government.

"Ours," he says in *Congressional Government* (1885), "is, scarcely less than the British, a living and fecund system. It does not, indeed, find its rootage so widely in the hidden soil of unwritten law; its tap-root at least is the Constitution; but the Constitution is now, like *Magna Carta* and the Bill of Rights, only the sap center of a system of government vastly larger than the stock from which it has branched. . . . The Constitution itself is not a complete system, it takes none but the first steps in organization, . . . and the fact that it attempts nothing more is its chief strength. For it to go beyond elementary provisions would be to lose elasticity and adaptability. The growth of the nation and the consequent development of the governmental system would snap asunder a Constitution which could not adapt itself to the new conditions of an advancing society. . . . Our Constitution has proved lasting because of its simplicity. It is a corner-stone, not a complete building; or, rather, to return to the old figure, it is a root, not a perfect vine." (pp. 7-9.)

The same thought is developed in *Constitutional Government* (1908). "Living political constitutions must be Darwinian in structure and in practice. Fortunately, the definitions and prescriptions of our constitutional law though conceived in the Newtonian spirit and upon the Newtonian principle, are sufficiently broad and elastic to allow for the play of life and circumstance. . . . The Government of the United States has had a vital and normal organic growth and has proved itself eminently adapted to express the changing temper and purposes of the American people from age to age." (p. 57.)

Bryce remarks to the same effect: "The American Constitution has changed, is changing, and by the law of its existence must continue to change, in its substance and practical working even when its words remain the same." (*American Commonwealth*, 1888, ed. 1891, p. 390.)

Beard explains the method of constitutional evolution in the United States: "Only fifteen (now nineteen) new clauses, it is true, have been added by way of

In conclusion, the writer believes the phrase in question is important because it insists upon the applicability of the constitutional history of nations, especially of England, to the problem of international organization. The "*acceptance*" of political guarantees and the "*prescription*" of moral principles are recognized as of value. But these have been tried in the past and have proved insufficient. Consequently an organization to "*maintain*" justice and treaty obligations is required. But the great problem remains. How to "*establish*" an organization at the same time effective and controlled? How to reconcile liberty and independence for states with the enforcement of law and order? The answer is sought in "the firm establishment of the *understandings of international law* as the actual rule of conduct among governments." The constitution of the League of Nations is to be built up of understandings in the twilight zone of law and morality, enjoying the regularity of obedience of one and the flexibility of the other, infinitely tenacious yet capable of indefinite adaptation. This conception of the way in which international organization may develop should commend itself to students of the constitutional history of nations.

amendment to the written document, but Congress has filled up the bare outline by elaborate statutes; party operations have altered fundamentally the spirit and working of much of the machinery; official practice has set up new standards from time to time; and the supreme court, by generous canons of interpretation, has expanded, in ways undreamed of by the Fathers, the letter of the law. In fact, the customs of our constitution form as large an element as they do in the English constitution. A correct appreciation of the evolutionary character of the federal system is, therefore, necessary for a true understanding of the genius of the American political institutions." (American Government and Politics, 1910, p. 60.) Professor Munro in his recent book on the Government of the United States (1919) is especially emphatic on this point. (p. 57.)

EDITORIAL COMMENT

A PERMANENT COURT OF INTERNATIONAL JUSTICE

For years partisans of justice between nations have advocated the establishment of a High Court of the Nations to decide every dispute between States, parties to its creation, according to the rules of law which in the opinion of the judges of such a court apply to the dispute and which has been submitted by one or other state in controversy to the court.

The First Hague Peace Conference of 1899 declared itself in favor of the arbitration of disputes between States as the most equitable way of settling and getting them out of the way. It went further by providing a permanent panel of arbiters from whom a temporary tribunal could be chosen by the States in controversy for the adjustment of the dispute upon the basis of respect for law. The conference did not stop here. It provided a code of arbitral procedure to be used by the parties unless they should care to vary it and adopt a procedure more suitable to the particular case.

This was a great step in advance. It was not a permanent court, but it made it easier to take the next step.

This the Second Hague Peace Conference of 1907 did by adopting a draft Convention for the establishment of a Court of Arbitral Justice. This Convention provided for the organization, jurisdiction and procedure of a permanent court to be located at The Hague, composed of judges to be appointed in advance of cases and to serve for a period of twelve years.

The Conference was, however, unable, owing to the pressure of other business and the limited time at its disposal, to devise a method of selecting the judges generally acceptable to its members.

The acceptance of the principle of permanence and the adoption of a draft convention for a permanent court of justice as distinct from a temporary court of arbitration made it easier to take the third step.

This an Advisory Committee of Jurists did at The Hague in the months of June and July of the present year by agreeing upon a

method of selecting the judges acceptable to the representatives of ten states. This Committee was appointed by the Council of the League of Nations, and was, in the language of the League of Nations Official Journal for June, 1920, "composed of ten members, five of whom are nationals of the five great Powers and five nationals of smaller Powers," as follows: Messrs. Adatei (Japan), Altamira (Spain), Bevilacqua (Brazil), replaced by M. Fernandes, Baron Descamps (Belgium), Hagerup (Norway), de Lapradelle (France), Loder (Netherlands), Lord Phillimore (Great Britain), Messrs. Ricci Busatti (Italy), and Elihu Root (United States).

The members of the Committee were without instructions; they were not, however, free agents. They were appointed by the Council of the League of Nations to advise that body in the performance of its duties under Article 14 of the Covenant:

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

The Committee was therefore to draft a permanent Court of Justice, not of Arbitration, to render judgment between parties and to advise the Council or Assembly in other cases.

To this extent the Committee was to act under instructions. Again Article 13 of the Covenant practically settled the jurisdiction of the Court, providing as it does:

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

Then, again, while the court was to be principally the court of the members, it was undoubtedly to be open to non-members upon such

terms as the Council, in pursuance of Article 17 of the Covenant, may lay down.

The difficulty confronting the Advisory Committee in 1920 was the difficulty that confronted the Second Hague Conference in 1907, an acceptable method of selecting the judges. The Committee succeeded where the Conference failed. It was able to and actually did take the third step. How and why? Because the Covenant of the League of Nations provided for two organs. In the Council the five great Powers are permanently represented, while all the other members of the League are represented by four elective members. The five, therefore, have a majority of one. In the Assembly each Power has one vote, although it may have as many as three representatives. The smaller Powers are therefore in the majority.

The interests of the great Powers are represented in the Council; the interests of the smaller Powers are represented in the Assembly.

Mr. Root, therefore, proposed that the judges should be selected by the concurrent action of the Council and the Assembly. In this way the interests of the great and the smaller Powers would be safeguarded and each body would have a veto upon the abuse of authority by the other. A failure to agree is to be met by a conference committee to consist of an equal number of members chosen by the Council and Assembly, as is the practice of the Senate and House of Representatives of the United States. The list of judges is to be selected by the members of the Permanent Court of Arbitration, each national group proposing two candidates without regard to nationality. From these persons the Council and Assembly are to elect. The details, the result of much discussion and the contribution of various members, are stated in Articles 4, 5, 6, 7, 8, 9, 10, 11, 12 of the Project.

The judges are to be "elected regardless of their nationality," in the sense that no nationality is of right to be represented in the court. They are to be eligible for appointment to the highest judicial posts of their respective countries or are to be international lawyers of repute (Article 2).

The judges are, according to Article 3, of two classes: titular judges (in the French text) or judges (in the English text); and deputy judges to take the place of judges of the court in case of temporary vacancy, or in the case of a permanent one until a new election takes place. At present, there are to be eleven judges and four deputies. The number of judges can, however, be increased to fifteen and the

deputies to six. That is to say, the Court is to consist in first instance of eleven judges and four deputies, and may, upon the proposal of the Council of the League of Nations, be raised to twenty-one (fifteen judges and six deputies).

All judges, titular or deputy, are to be elected for a period of nine years and may be reelected; they remain in office until the vacancy has been filled and finish the cases which they have begun (Article 13).

The judges cannot hold positions which it is supposed will interfere with the impartial performance of their judicial duties (Article 16). They cannot take part in cases with which they have been previously connected (Article 17). In case of doubt, the Court itself is to decide. The seat of the Court is at The Hague and the President (elected by his colleagues) and the registrar or clerk of the court, to be appointed by the judges, must reside in that city. A regular session of the court is to be held each year, beginning on June 15th, unless otherwise provided for in the Rules of Court (Article 23). It is to sit *in pleno*, but if the eleven members cannot be present, deputy judges are to be called in, and if eleven cannot be had by calling upon deputies, a quorum of nine may transact business. Provision is made for a court of three to be appointed annually, which smaller body is competent to hear and decide "in summary procedure" such cases as the parties litigant may care to submit to this method of decision (Article 26).

Some litigants are likely to have judges of their nationality on the bench in cases where the other party has none. Are they to withdraw or are temporary judges to be appointed by the parties in litigation not so represented? That is to say, are all or none to be represented? After much discussion, the first alternative was adopted by Article 28, which permits but does not require parties litigant to appoint temporary judges. If they do, then the temporary judge must meet in every respect the requirements of titular judges and be treated on a footing of equality with the others.

Judges and court officials are to be paid appropriate salaries to be fixed by the Council and Assembly, and may, at the discretion of these bodies, receive pensions on retirement.

So much for the organization of the court. Next as to its jurisdiction.

In the absence of special treaties or conventions to the contrary,

the court only takes cognizance of suits between states (Art. 31), although a state may espouse the cause of its national, and while it is open of right only to members of the League or those states mentioned in the Annex to the Covenant of the League, other states may be permitted to use the court by the Council in accordance with the terms of Article 17 of the Covenant (Article 32).

But diplomacy shall have been resorted to and have failed before the court assumes jurisdiction, unless the parties should by special agreement waive this requirement (Article 33).

Even then not all disputes are to be laid before the court, which is one of limited jurisdiction, unless the parties by special agreement waive the limitations of Article 34. Without such a special agreement, the court can accept and decide only justiciable disputes, provided they fall under the following heads:

- (a) the interpretation of a treaty;
- (b) any point of international law;
- (c) the existence of a fact, which, if established, would constitute the violation of an international agreement;
- (d) the nature or extent of reparation due for the breach of an international engagement;
- (e) the interpretation of a sentence rendered by the court.

The last of these categories is taken from Article 82 of the Pacific Settlement Convention of the Second Hague Peace Conference of 1907. The others are from Article 13 of the Covenant.

The majority of the Advisory Committee was of the opinion that in such disputes no special agreement of the parties, that is to say, no *compromis*, was necessary as in arbitration. The Japanese member was of the opinion that such a special agreement was necessary. He therefore accepted the article subject to his interpretation. The Italian member preferred the interpretation of his Japanese colleague, but did not go so far as formally to reject the opinion of the majority.

The Council and the Assembly will necessarily have to decide this question, as it is fundamental and cannot be overlooked. It is the distinction between arbitration and judicial procedure; it is the distinction between a tribunal of arbitration and a court of justice. In arbitration the parties define the question and submit the issue to arbiters of their choice; in judicial settlement, each party states its case to the court, which frames the issue and decides it by judges chosen in advance and without reference to the dispute. In arbitra-

tion both parties must appear before the tribunal; in judicial procedure one party may submit its case, present the facts, argue the law and obtain judgment against the other party duly summoned but not appearing.

How is the law to be found and applied to disputes falling under Article 34? This matter is dealt with in Article 35, the text whereof is as follows:

The Court shall, within the limits of its jurisdiction as defined in Article 34, apply in the order following:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. International custom, as evidence of a general practice, which is accepted as law;
3. The general principles of law recognized by civilized nations.
4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Of necessity, the Japanese member was opposed to this article, as in his opinion the special agreement would contain such details of this kind as the parties agreed to in the *compromis*.

Finally, it is to be said in this connection that when the court is asked its opinion by the Council or Assembly on a hypothetical case, it may act as a committee of three to five members. When, however, an actual case is laid before it, it sits as a court and renders its opinion in the form of a judgment (Article 36).

The third and last section of the project deals with procedure, and there are only a few matters that need to be specially mentioned in a mere comment.

French is the language of the court, unless the parties, with the consent of the court, authorize the use of another language (Article 37).

The case is to be begun by an application of one of the parties to the clerk of the court. The adverse party or parties and all members of the League are to be notified forthwith. This is necessary for two reasons: the adverse party is not bound to join with the petitioner as in the case of arbitration; and other parties than those mentioned may care to intervene in accordance with Articles 60 and 61.

It may happen that because of actions taken or imminent, the matter in dispute may be prejudiced. Therefore, the project in Article 39, lifted bodily from Article 4 of Secretary Bryan's treaties for the

advancement of peace, signed on September 15, 1914, between France and China and the United States, authorizes the court to suggest to the parties such measures as it may deem necessary to be taken pending the trial and disposition of the case. A like disposition is to be found in Article 4 of the treaty with Sweden of October 13, 1914. This provision is no larger than a man's hand, but it may yet loom large upon the international horizon.

Then follows a series of provisions taken from the Pacific Settlement Convention of the First and Second Hague Peace Conferences, the Draft Convention for a Court of Arbitral Justice and the Prize Court Convention of the Second Hague Peace Conference. For example, the parties are to be represented by agents, advocates, or counsel (Article 40); the procedure is written and oral (Article 41), the written procedure consisting of cases, counter-cases and replies and containing certified copies of the documents relied upon (Article 42), the oral procedure consisting in the hearing of witnesses, experts, agents or counsel before the judges after the court has met for the trial of the case (Article 43).

The President, Vice-President or, in their absence, the senior judge, presides (Article 44) and the hearing is to be public unless the court should decide to hear the case behind closed doors upon the reasoned request of one of the parties (Article 45). Official minutes of proceedings signed by the Registrar and President are to be kept (Article 46). The court may make rules from time to time for the conduct of the cases and fix the time within which the parties are to conclude their arguments and make arrangements for the taking of evidence (Article 47).

It may happen that the parties have not presented all the documents which the court thinks necessary for the proper disposition of the case. The court may therefore ask for their production, and a failure to do so is to be noted (Article 48). The court may have testimony taken or request an expert opinion (Article 49); the judges may put questions to witnesses, experts or representatives of the parties, and the agents and counsel may request the presiding officer to put questions and in case of refusal may appeal to the court from the ruling of the President (Article 50). This provision is very wise, as continental chairmen rule with a high hand and are apparently not in the habit of yielding to counsel. In the further interest of justice, the court may, but is not obliged to, permit the introduction of evi-

dence after the time fixed by the court for its production. Upon the request of both parties the court must admit it (Article 51).

What if one only of the parties appears as a litigant? Can proceedings be had in the absence of the defendant? Yes, says Article 52, in accordance with the procedure devised by and followed in the Supreme Court of the United States. Such cases will be rare, rarer because of the article. But however rare, justice will be done if the court is established and Article 52, which follows, be retained:

Whenever one of the parties shall not appear before the court, or shall fail to defend his case, the other party may call upon the court to decide in favor of his claim.

The court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 33 and 34, but also that the claim is supported by substantial evidence and well founded in fact and law.

When the case is closed, the court withdraws to consider it in chambers and its deliberations are and remain secret (Article 53), except as their results appear in the judgment, which may be reached by a majority, made, if need be, by giving to the President a casting vote (Article 54).

The judgment states its reasons, mentions the names of the judges taking part in the decision (Article 55), and the dissenting judges have a right to have their dissent or reservations mentioned, but not a statement of their reasons (Article 56). Practice differs in different countries and in different courts. It seemed best to the Committee to require reasons for the judgment but only to permit a statement of dissent; otherwise national judges might be inclined to argue the case of their respective countries in the very judgment of the court to the discredit of judgment and court. Experience will show whether the Committee acted wisely or not.

For purposes of identification the judgment is to be signed by President and registrar (Article 57), and the judgment so rendered and signed is to be final (Article 58); that is to say, final unless a material fact is discovered which, if known before the judgment, was of a kind to have affected the judgment. The fact must have been unknown to the party claiming to have the judgment revised. The court must find that the fact was of this nature and that the ignorance of the party alleging it was not due to negligence. In any event, proceedings in revision cannot be had after the expiration of five

years, and the court may require compliance with the judgment as a condition precedent to revision.

These provisions of Article 59 are not new: they were transferred with slight changes in form from Article 55 of the Pacific Settlement Convention of 1899 and Article 83 of the revised Convention of 1907.

The project has heretofore considered the typical case of a single plaintiff and a single defendant. It may be that a third party has a very real interest and of a legal nature in the decision of the case. It may ask to intervene, and the court decides whether it should be permitted to do so (Article 60). But there is a class of cases in which a third state, and indeed many states, are interested and in which the permission of the court should not be necessary. That is the case of a convention to which more than two nations are parties. Each party to the convention is interested in its interpretation and each may of right intervene in the proceedings. They do so at their peril, as they are bound by the judgment of the court, which could not affect them in point of law, although it would morally, if they did not intervene in the case (Article 61).

Who shall pay the piper? if such a familiar phrase be permitted. The expenses of the court are to be borne by the parties to its creation; the expenses of the parties to the suit are to be borne by the parties in litigation. However, there may be circumstances in which this rule may seem inequitable to the court and the court is authorized to vary it, according to Article 62, the last of the Project.

The court is to find facts, ascertain the law and apply its rules to the facts as found or admitted. This is its sole duty. The execution of a judgment is a matter for the executive. The Advisory Committee therefore left it to the League of Nations to take such action as it might deem advisable in the matter of execution.

Such is in brief, indeed, summary form, the project of the Advisory Committee.

It did not, however, stop here. It felt the need of international conferences to frame rules of law for new cases or cases hitherto considered beyond the domain of law. It therefore unanimously recommended the meeting at stated intervals of conferences for the advancement of international law, as successors to the First and Second Hague Peace Conferences.

The Advisory Committee further suggested to the Council and Assembly the question of organizing a High Court of International

Justice for the trial and punishment of acts committed in the future which may disturb the public order and constitute breaches of international law. The violation of Belgian neutrality and offenses alleged to have been committed by Germany in the World War are of the kind that would be laid before such a tribunal, which is to consist of one representative of each of the nations.

Finally, the Advisory Committee expressed the hope that the Hague Academy of International Law and Political Sciences, established in 1913, and which was to have opened in the month of August, 1914, may begin its labors in the Peace Palace at The Hague alongside of the Permanent Court of Arbitration of The Hague, and the Permanent Court of International Justice to be located at The Hague.

The establishment of the court depends upon the concurrent action of the Assembly and the Council of the League of Nations. If the League should not establish it, or if having created it the League should itself go out of existence, will the court fail? Not if the nations wish to preserve it. They need only accept the unanimous recommendation of the Advisory Committee, call a conference for the advancement of international law, invest the diplomatic corps at The Hague with the powers of the Assembly in so far as the court is concerned, invest an executive committee of the diplomatic corps at The Hague with the powers of the Council. It seems therefore safe to prophesy that whether the League succeeds or whether it fails, the Society of Nations will have a Permanent Court of International Justice, "accessible to all and in the midst of the independent Powers," to quote the memorable language of the preamble to the Pacific Settlement Conventions of the First and Second Peace Conferences at The Hague, which will be, it is hoped, but two links in an ever-lengthening chain by which the nations shall be bound together in justice.

JAMES BROWN SCOTT.

HONORABLE ELIHU ROOT'S LONDON ADDRESS ON ABRAHAM LINCOLN

On August 28, 1920, Mr. Elihu Root presented on behalf of the American people a statue of Abraham Lincoln to the British people to stand in the Canning enclosure in the City of London, within a stone's throw of the Houses of Parliament where the liberty of Eng-

land and America was made, and the forms of representative government devised to make that liberty effective, and within a stone's throw of Westminster Abbey, "where sleep the great of Britain's history," who made that liberty universal and made that history the noblest of the modern world.

No man could be more un-English in outward appearance. No man was more English in qualities of mind and soul, and no man has carried to further completion the conception that liberty is not the privilege of a few or the prerogative of a race, but the inherent and inalienable right of mankind. "He was imbued," Mr. Root finely said, "with the conceptions of justice and liberty that the people of Britain had been working out in struggle and sacrifice since before Magna Charta—the conceptions for which Chatham and Burke and Franklin and Washington stood together, a century and a half ago, when the battle for British liberty was fought and won for Britain as well as for America on the other side of the Atlantic. These conceptions of justice and liberty have been the formative power that has brought all America, from the Atlantic to the Pacific, to order its life according to the course of the common law, to assert its popular sovereignty through representative government—Britain's great gift to the political science of the world—and to establish the relation of individual citizenship to the State, on the basis of inalienable rights which governments are established to secure."

Herein Mr. Root finds the unity of Great Britain and the United States in the things that matter, the oneness in heart and soul, and the guaranty that in great crises they will be found shoulder to shoulder as in the great days of the World War which are still with us.

"It is the identity of these fundamental conceptions in both countries which makes it impossible that in any great world emergency Britain and America can be on opposing sides. These conceptions of justice and liberty are the breath of life for both. While they prevail both nations will endure; if they perish both nations will die."

Lincoln had never set foot on English soil. Politically, he was not of them; morally he was; and he knew them as only men of the same flesh and blood, of the same speech and ideals, instinctively feel and know and are drawn to each other. The emancipation of the slaves turned the tide of battle at home and changed the current of feeling in England. The common people felt the strong arm of the common leader press heavily upon their shoulders. The common

people of the North responded with victories in the field, the common people of England with sympathy that withstood the test of starvation. Cotton was dethroned as king and free labor came into its own in England just as the final battle of political liberty was won upon American fields. The United States needed the support of England; President Lincoln wished also the sympathy of England. He was anxious to have the cause of the North laid before the people of England as a moral cause, assured that it would triumph, whereas as a political cause it might fail. He therefore drafted with his own hand the form of resolution which he hoped to see adopted by public meetings in England. This is the form of one sent by Charles Sumner to John Bright, for Lincoln did not communicate directly with that sturdy champion of a nation's cause:

Whereas, while heretofore, States, and Nations, have tolerated slavery, recently, for the first time in the world, an attempt has been made to construct a new nation, upon the basis of, and with the primary, and fundamental object to maintain, enlarge, and perpetuate human slavery, therefore,

Resolved, That no such embryo State should ever be recognized by, or admitted into, the family of Christian and civilized nations; and that all Christian and civilized men everywhere should, by all lawful means, resist to the utmost, such recognition or admission.

Mr. Root singles out the great response of six thousand people of Manchester to which he quotes Lincoln's reply, stating, as it does, a hope and more than a hope, for it voices the determination of one of them, that the English-thinking peoples on both sides of the Atlantic shall always live in peace and friendship.

"Under these circumstances," that great President said who preserved the republic that Washington made, "I cannot but regard your decisive utterances upon the question as an instance of sublime Christian heroism, which has not been surpassed in any age or in any country. It is indeed an energetic and reinspiring assurance of the inherent power of truth, and the ultimate and universal triumph of justice, humanity, and freedom. I do not doubt that the sentiments you have expressed will be sustained by your great nation, and on the other hand I have no hesitation in assuring you that they will excite admiration, esteem, and the most reciprocal feelings of friendship among the American people. I hail this interchange of sentiment, therefore, as an augury, that, whatever else may happen, whatever misfortune may befall your country or my own, the peace and

friendship which now exists between the two nations will be, as it shall be my desire to make them, perpetual."

So may it ever be.

If Lincoln stands in the very heart of London as representing aright the American to the British people, is it not time that a monument should stand in the city of Washington and of Lincoln which will represent aright the British to the American people?

A British Ambassador to the United States said some years ago that the novelty attendant upon the unveiling of monuments erected in the United States to onetime enemies of his country was quite worn off, and that he looked forward to a happier day when one of his successors, more fortunate than he, might be called upon to speak at the unveiling of a monument to an Englishman whose memory was cherished in America. Mr. Root has mentioned two in the course of his Lincoln speech, Chatham and Burke. They and their services to America, and therefore to British liberty, are known to every school-boy. How often have we heard young America declaim Lord Chatham's impassioned burst that "If I were an American as I am an Englishman, while a foreign troop was landed in my country, I never would lay down my arms, never! never! never!" Who among us has not quoted some time or other Burke's concession to the Colonists. "My vigor relents,—I pardon something to the spirit of liberty." And it was Burke who confessed in this same speech on conciliation of America that "I do not know the method of drawing up an indictment against a whole people."

More than one city in this goodly land bears the name of Camden for his Lordship's advocacy of the American cause. And what of Colonel Isaac Barré, wounded with Wolfe at Quebec, whose characterization of the Colonists as "Sons of Liberty" ran like wildfire throughout the country, and whose name survives in Wilkesbarre?

And what of Charles James Fox, who acclaimed American courage at Bunker Hill and who took the buff and blue of Washington's uniform for the colors of the Whig Party?

A monument to Chatham, surrounded by these noble defenders of a just and victorious cause, would fitly stand in the City of Washington in Jackson Square where America has honored other servants of liberty.

And what of John Bright, who stood by Lincoln and human freedom and American Unity during the dark days of the Civil War?

Read what he thought of Lincoln: "I will not write an eulogy on the character of President Lincoln—there will be many to do that now that he is dead. *I have spoken of him when living.* . . . In him I have observed a singular resolution honestly to do his duty, a great courage—shown in the fact that in his speeches and writings, no word of passion, or of panic, or of ill-will, has ever escaped him—a great gentleness of temper and nobleness of soul, proved by the absence of irritation and menace under circumstances of the most desperate provocation, and a pity and mercifulness to his enemies which seemed drawn as from the very fount of Christian charity and love. His *simplicity* for a time did much to hide his *greatness*, but all good men everywhere will mourn for him, and history will place him high among the best and noblest of men."

And for the same John Bright, Lincoln, the President of a grateful people, exercised the sovereign power of pardon:

Whereas one Alfred Rubery was convicted on or about the twelfth day of October, 1863, in the Circuit Court of the United States for the District of California, of engaging in, and giving aid and comfort to the existing rebellion against the Government of this country, and sentenced to ten years' imprisonment, and to pay a fine of ten thousand dollars;

And whereas, the said Alfred Rubery is of the immature age of twenty years, and of highly respectable parentage;

And whereas, the said Alfred Rubery is a subject of Great Britain, and his pardon is desired by John Bright, of England;

Now, therefore, be it known that I, Abraham Lincoln, President of the United States of America, these and divers other considerations me thereunto moving, and especially as a public mark of the esteem held by the United States of America for the high character and steady friendship of the said John Bright, do hereby grant a pardon to the said Alfred Rubery, the same to begin and take effect on the twentieth day of January, 1864, on condition that he leave the country within thirty days from and after that date.

There is nothing like this in American history, and there was nothing like John Bright in British history.

The last sight that an American sees in leaving the Port of New York and the first that gladdens his wistful eyes as he returns from foreign parts is the noble statue of Liberty which France presented to America.

Would not the people of America welcome the friends of the American Revolution whose memory they have cherished for the past hundred and fifty years? Would they not receive with open arms the

friend of Lincoln? And would not this exchange bind together America and England, not by hooks of steel which are weak, but by bonds of sympathy which are unbreakable?

JAMES BROWN SCOTT.

THE INSTITUTE OF INTERNATIONAL LAW

In the early days of August, 1913, the Institute of International Law met in the city of Oxford and celebrated the fortieth anniversary of its existence, little dreaming that a year later its membership would be divided by war into two enemy groups. Little also did the members dream that their next meeting would be held during a peace conference composed of representatives of twenty-three Powers, among them the United States of America, in the city of Paris, to impose terms upon the great Power that was the Empire and now is the Republic of Germany.

At the Oxford session, Munich was chosen for the session of 1914, and preparations were well under way for the opening of that session on the 18th day of September of that memorable year. Dr. Harburger, Counsellor of the Supreme Court of Bavaria and professor in the University of Munich, was to preside at the session. The meeting did not take place, and Dr. Harburger, in company with a number of other distinguished members and associates, has passed away.

The statutes provide that there shall be a session at least every two years. They did not contemplate or foresee such a situation as that created by the World War, as almost five years had passed since the Oxford meeting. It appeared to members and associates living in Paris and others temporarily in Paris in attendance upon the Peace Conference that a meeting should be held before the ranks of the Institute had been further depleted, and steps taken to complete its membership, although some of the members could never be replaced, such as Dr. von Bar of Germany and Professor Renault of France.

The members and associates in Paris and Mr. Albéric Rolin, the Secretary-General, who chanced to be in Paris, met to canvass the situation. This informal meeting was attended by eighteen members and associates under the presidency of Sir Thomas Barclay, vice-president, and since the death of Dr. Harburger, acting president. After a second informal meeting to discuss the proper procedure to

be followed under the exceptional circumstances then existing, it was decided that the Institute should meet in extraordinary session on Thursday, May 8, 1919, and close on Saturday the 10th. The Secretary-General was requested to notify the European members and associates by letter and the extra-European members and associates by telegram, with the exception of the members and associates of countries at war with the Allied and Associated Powers. It was decided not to invite these latter, inasmuch as by a rule of international law enemies could not communicate, and all citizens and subjects of these various countries were, in the eye of the law, enemies, notwithstanding the armistice, which only suspended military and naval operations.

The meeting was held in the faculty room of the Law School of the University of Paris through the courtesy of its distinguished dean, Professor Larnaude. Thirteen members and twelve associates, drawn from eleven different countries were present, as follows: Members: Sir Thomas Barclay (Great Britain), Messrs. Bustamante (Cuba), Clunet (France), Corsi (Italy), Descamps (Belgium), Fauchille (France), Kebedgy (Greece), Pillet (France), Alberic Rolin (Belgium), Rolin-Jaequemyns (Belgium), Scott (United States), Vesnitch (Serbia), Weiss (France). Associates: Messrs. Alvarez (Chile), de Blociszewski (France), de Boeck (France), Clère (France), Jordan (France), Mercier (Switzerland), Mérignhac (France), de Peralta (Costa Rica), Politis (Greece), Sela (Spain), Vallotton (Switzerland).

Sir Thomas Barclay presided and delivered an address, and Professor Weiss was elected vice-president for the session. Mr. Albéric Rolin delivered his report as Secretary-General. It had been decided to discuss the Declaration of the Rights and Duties of Nations, adopted by the American Institute of International Law at its session in Washington, held in 1916. Mr. de Lapradelle presented a report on the Declaration, but after an exchange of views it was decided not to adopt resolutions of a scientific character, but rather to prepare the way for a fruitful session for the next year by electing officers, fixing the time and place of the next meeting, and by passing in review the subjects referred to commissions, revising the personnel of such commissions and appointing new commissions for the consideration of additional subjects. Nevertheless, the Institute unanimously adopted a resolution appreciating and approving "the elevation of

thought and the profound sentiment of justice which inspired the Declarations of the American Institute of International Law on the Rights and Duties of Nations," and directing the Bureau to place this question on the programme for the next ordinary session. A commission to examine the Declaration was then appointed, with Mr. de Lapradelle as reporter.

It was proposed that the recommendations of Habana on International Organization adopted by the American Institute in 1917 be referred to a commission for examination and report. After an exchange of views it was decided to enlarge the scope of the commission by having it examine how the protection of nations may be assured. Of this commission Messrs. Rolin-Jaequemyns and Bustamante were appointed reporters.

Another commission on the subject of an International Court of Justice was appointed, with Mr. Scott as reporter.

The Institute thereupon examined one by one the different commissions, continuing most, abolishing some and adding in not a few instances new members in place of those who had died in the interval.

The question of the time and place of the next meeting was discussed. Mr. Scott proposed the first week in October, 1920, and suggested Mr. Root as president. Washington was chosen, and Mr. Root elected president, to enter forthwith upon his duties and to preside at the next session of the Institute whether it should be held in Washington or elsewhere.

The Institute thus put its house in order, so to speak, and prepared the way for an ordinary session to be held in the year 1920.

There was a strong desire to take some action concerning the war and its conduct. It was finally decided that a declaration, unanimously adopted by the twenty members and associates present (Messrs. Bustamante, Scott, and Vesnitch left the session rather than vote for it or indeed be present during its discussion), should be issued over the individual signatures of those voting for it and not as a declaration of the Institute. The text of this document is thus worded:

The undersigned, members and associates of the Institute of International Law, assembled at Paris in extraordinary session, after a war which has shaken the bases of international law, consider it as their duty, even before the Institute can resume the regular course of its labors, which have been so long interrupted, to make the following individual and public declaration:

They condemn with all their power the premeditated violation of the solemn acts with respect to the neutrality of Belgium and Luxemburg, of the treaties, rules and customs regarding the conduct of war as well as of the laws of humanity. They condemn no less energetically the theory of necessity by which it is attempted to justify these acts.

But they are convinced that the restoration and the scientific development of international law must be pursued in a spirit of honest collaboration by jurists who are deeply imbued with the duty of respecting treaties and are seriously resolved not to admit any excuse for justifying the violation of a given pledge.

Upon the motion of Mr. de Lapradelle it was decided to put this declaration to a vote at the next regular session of the Institute, just as it had previously been agreed to put to a vote at the next session all action taken at the extraordinary session to avoid any question of their validity.

As was to be expected, some of the German members and associates have protested against the declaration, and in consequence Messrs. von Martitz, Meurer and Triepel have resigned.

The presidential elections in the United States turning in a large measure on the ratification of the Treaty of Versailles, suggested the postponement of the session of the Institute to be held at Washington. The Bureau has accordingly postponed the meeting. At present it is uncertain whether a session will be held this year or whether it will be postponed until the spring or summer of 1921. If the Institute is to survive and resume its noble career, interrupted by a war which has settled nothing and has unsettled much, it must perforce begin apace. Otherwise it will lose its most distinguished members and associates and with them its prestige. The Institute was needed in the past; it will be more needed in the future. It must meet and it should meet soon.

JAMES BROWN SCOTT.

AMERICAN SOLIDARITY

On April 21, 1920, the distinguished and farsighted President of the Republic of Uruguay, Dr. Baltasar Brum, delivered an address on American solidarity before the University of Montevideo.

The address was not born of the moment and did not content itself with vague and uncertain generalities. It spoke of the policy of the past as a means of forecasting the future policy of his country and

of the American Continent, of which each American Republic is to be regarded as an integral and equal part. It laid down this policy in general terms and formulated it in express and specific terms in six numbered paragraphs. These conclusions are in effect a summary of the views expressed by Dr. Brum in the course of his address and the address itself can be taken as a philosophical justification of the six articles with which it concludes. These conclusions of the learned statesman of the sister republic are:

(a) All American countries will consider as a direct offense that which might be inflicted, by extra-continental nations, to the rights of any of them, originating the offense therefore a uniform and common retaliation.

(b) Without prejudice to an adherence to the League of Nations, an American League should be formed on the basis of absolute equality of all the associate countries.

(c) No question, which, according to the laws of the country, should be judged by its judges or courts, can be taken out of its national jurisdictions by way of diplomatic appeals and these would only be admitted in case of flagrant injustice.

(d) Any son of a foreigner born in the American Continent will be considered a citizen of the country he is born in, excepting the case where, having attained majority and finding himself in the country of his parents, he should choose to belong to this country.

(e) All controversies, of any nature whatsoever, and which for any reason might arise amongst American countries should be submitted to the arbitration of the League, when these cannot be solved directly by friendly mediation.

(f) Should any American country have any controversy with the League of Nations it can ask for the coöperation of the American League.

These conclusions are well worth serious consideration. They are not merely the ideals of the man of ideals, but they are the maturely formed and authoritatively expressed terms of a continental policy of a seasoned statesman, speaking with the weight and responsibility of the presidency of one of the most enlightened of American Republics.

Before taking up the address in so far as it may be necessary in order to justify in Dr. Brum's opinion the conclusions which naturally and inevitably flow from his discourse, it is well to dwell for a moment upon his views upon the teaching of international law, in which the readers of this JOURNAL will be interested and with which they will doubtless agree. "I think," he says, "that the teaching of this subject—so as to carry out successfully its vast program—should not be limited to the history of international law and to the study of the

doctrines dogmatized by eminent writers, but rather that it is necessary to fertilize both with ample comments on our foreign policy in the past, in the present and in the future, in which comparisons may be drawn, advantages and inconveniences pointed out, and the precedents and lawful standards be compared with the conditions existing in our own position."

The advantage of such a method would be to prepare future diplomats and to familiarize them with the important problems of the foreign policy of Uruguay, and enable the public men charged with the foreign policy of the future to solve these problems in accordance with principles of justice and a due regard for the interests of the country. Dr. Brum states his intention of indicating "the fundamental lines of the conduct which, in my [his] judgment, should be adopted by our country in the face of present day important questions." He is, however, fair to his hearers, warning them not to expect an immediate fulfilment of the ideal "since it is necessary to bear in mind that sometimes insurmountable difficulties arise, created at determined moments by powerful interests, moral or material, which must be respected." He has the conviction, however, that the standards which he advocates "will outweigh all minor inconveniences and will make it possible for the American Continent, free from partisan hatred and pernicious race prejudice, to be capable of having influence to attenuate the arrogant rivalries that now ruin the European countries and jeopardize the well-being of the world." Nay, more, he believes "that America will be able, through her democracy and her idealism, placed at the disposal of a broad-minded solidarity and of a convenient organization, to contribute to the restoration of the oppressed races to the full exercise of their sovereignty." His belief is nothing more nor less than that the policy which he advocates will carry into effect the boast of Canning, that he called the New World into existence to redress the balance of the Old.

How is this to be done? In the first instance by Pan-Americanism, to which every American Republic shall be a party. There is, of course, no doubt in the mind of every American publicist to the south of the Rio Grande that the twenty states of Latin origin should be united by moral bonds and face the world together. Without the United States this would be Latin-Americanism: it would not be Pan-Americanism. But Dr. Brum is an advocate of Pan-Americanism and he therefore stands for the inclusion of the United States. He

is not without misgivings, for the monster to the North—the phrase is the writer's, not Dr. Brum's—"may have been unjust and harsh with some of the Latin countries," to quote Dr. Brum's language. Nevertheless, the great Republic seems to have mended its ways and is more inclined to a juster policy towards its neighbors to the South. Dr. Brum does not go into particulars, but perhaps the freeing of Cuba, and the evacuation of that country after having secured its liberation from Spain by force of arms may be an indication that the sense of justice, which is supposed to pervade little states, is beginning to prevail in the practice of one of the large ones. The withdrawal of an army of occupation a second time from Cuba may be a second instance of improvement. As to this, one cannot say, as Dr. Brum has not given examples of the change for the better. He has, however, mentioned the entrance of the United States into the World War, generously and justly "to defend the rights of all peoples and among them the independence and territorial integrity of the American countries, over which hung a cloud of danger if Germany, victor over Europe and without further control, should desire to extend her supremacy over the whole world, an aspiration which formed part of her vast imperialistic plans."

But although the Latin-American States must not dwell "on the memory alone of previous grievances" and must recognize "that nations as well as men may enjoy the right of evolution towards Goodness," the United States cannot expect to share in Pan-Americanism, unless "the powerful nation of the North decides to carry on a policy of justice and equality with its American sisters."

"Pan-Americanism," Dr. Brum says, and rightly it would seem, "implies the equality of all sovereignties, large or small, the assurance that no country will attempt to diminish the possessions of others and that those who have lost any possessions will have them rightly returned to them. It is, in short, an exponent of deep brotherly sentiment, and of a just aspiration for the material and moral aggrandizement of all the peoples of America."

The next step toward realizing Canning's ideal is the frank recognition of the existence and the acceptance of the Monroe Doctrine by every American Republic. Dr. Brum is again generous, saying explicitly that "the European conquests were until now obstructed by the influence of the Monroe Doctrine;" and that because thereof "European countries looking for expansion have preferred to satisfy

their ambitions or necessities with the aid of easier solutions offered them by the almost indefensive territories of Asia, Africa and Oceania, which also possess great natural wealth."

The Monroe Doctrine has therefore constituted "on the whole," Dr. Brum says, "an efficacious safeguard to the territorial integrity of many American countries," a fact clearly seen in German propaganda, which in case of victory would have reached "out to effect the conquest of the rich American soil, without fear, then, of the power of the country of Washington."

The entry of the United States into the war not only rid the United States of "the German peril" but also all American countries "threatened by the ambitions of Pan-Germanism." And because of the exhausted state of Europe after the war, America is freed from the fear of invasion from that quarter for many a year. The Monroe Doctrine is not needed for the present. Should the American Republics reject the doctrine on the pretext that it is now unnecessary? No, replies Dr. Brum, because "the Monroe Doctrine is the only permanent mark of solidarity of one American country to the others of the Continent." It is the only permanent one because it is the only one that has stood and still stands the test of time.

Should the doctrine be rejected because it is in the interest of the United States and is obnoxious to the nations of America, constituting a sort of protectorate over them? No, again says Dr. Brum. "It is not reasonable," he wisely adds, "to inquire if generous acts benefit or not the country that realizes them. . . . All that should be considered, therefore, is the good they produce." The doctrine is beneficial to every American state which could count upon the "help and support from the country of Washington." It is also a practical and efficacious proof of true solidarity.

To overcome the susceptibility of an American country, protected by the Doctrine without a request to the United States to intervene in its behalf, Dr. Brum proposes that "the American countries make a similar declaration to Monroe's, binding themselves to intervene in favor of any of them, including the United States, in case they should be engaged at war with an oversea country in defense of their rights." The result of such a declaration would be to enhance the dignity of each American state and to place all "on a footing of perfect moral equality with the United States." For example, if Uruguay were attacked by a European country, the United States and the other

American countries would intervene in its defense, and if the United States were attacked, Uruguay "with its brother countries of the continent would join in action against the unjust aggressor." In this way, he says, "the Monroe Doctrine, proclaimed as a standard of foreign policy of the United States, would become a defensive alliance between all the American countries, founded on a deep sentiment of solidarity with mutual obligations and reciprocal advantages for all concerned."

To the criticism that the Doctrine has "not served to avoid the inter-American imperialism, or European interventions for the purpose of obtaining compulsory payment of their credits, or substituting the republican governments by the monarchical," Dr. Brum replies that Monroe's declaration had no other purpose "than that of preventing territorial expansion of Europe in America, for reasons connected with the security of his own country and sentiments of solidarity and sympathy with the new nations of the Continent."

The doctrine, Dr. Brum continues, has nothing to do with inter-American conflicts which for the most part arose from the uncertain boundaries of the American countries. Wisely the United States refused to intervene in such matters, and Monroe with great foresight limited himself to preventing European conquests, "leaving matters concerning inter-American boundaries to be settled by the interested countries themselves, in a way they should consider most in conformity with their interests." American solidarity, not the Monroe Doctrine, is the defense against inter-American imperialism.

For like reasons, it was the part of wisdom, on the part of the United States, not to invoke the Monroe Doctrine to prevent the collection by force of debts due from American to European countries. Otherwise the United States would seem to be intermeddling in the internal affairs of the American states. However, the United States on various occasions made it clear that the collection of such debts should not be made the pretext for territorial acquisitions and offered its good offices to prevent such possibilities. The Drago Doctrine, not the Monroe Doctrine, is to be invoked in such cases.

With these questions out of the way, Dr. Brum states the attitude that the American states should assume towards one another and thus describes rather than defines American solidarity. And he is fortunate to single out his country and the action which he himself recommended shortly after the entry of the United States into the World

War as the attitude to be followed by all American states in the future.

Thus, in a note to the Brazilian Minister at Montevideo, dated June 12, 1917, Dr. Brum, then Uruguayan Minister of Foreign Affairs, said :

United as the nations of the New World are by eternal bonds of democracy and by the same ideals of justice and liberty, the logic of principles and interests, for better securing the efficiency of the former and the free development of the latter, must necessarily determine, in the presence of the events that actually affect the world, a close union of action, so that an attack against any of the countries of America, with violation of the universally recognized precepts of international law, may constitute an offense to all and provoke in them a common reaction.

Six days later, on June 18, 1917, this doctrine was embodied in a decree of the Uruguayan Government which should be and is set forth in full :

Considering: That in various communications the Government of Uruguay has proclaimed the principle of American solidarity as the regulator of its international politics, understanding that any contravention of the rights of a country of the Continent should be so considered by all and provoke in them a uniform and common reaction; That in the hopes of seeing the realization of a determination in that respect between the nations of America, which may make possible the practical and efficient application of said ideals, the Government has adopted an attitude of expectation as to its action, though signifying in each case its sympathy towards the continental countries which have found themselves obliged to abandon neutrality:

Considering: That until such an agreement is created, Uruguay, without contradicting its feelings and convictions, could not deal with the American countries which in the defense of their rights should find themselves engaged in an international war as belligerents;

Considering: That the Honorable Senate is also of the opinion,
The President of the Republic, with the full concurrence of his Ministers,

DETERMINES:

First: To declare that no American country which, in the defense of its rights, should be in a state of war with nations of other continents, shall be dealt with as a belligerent.

Second: To direct that no dispositions in opposition to the present resolution be carried into effect.

Dr. Brum's policy is a paraphrase of the famous line of Terence, *Homo sum: humani nil a me alienum puto*. I am an American and nothing that concerns America is foreign to me.

And there is much to be said for the poet and the statesman.

"What superior authority" is to decide whether the action of "an extra-continental nation is or is not against the rights of Americans?" Dr. Brum asks. An American League of Nations, he answers. In what may be called the universal League of Nations the American states are inadequately represented, and a league composed of an overwhelming majority of non-Americans should not pass upon purely American questions. Of course, Dr. Brum does not have in mind the Assembly of the League of Nations, where every state is represented by a single and equal vote. In this body America would have at least twenty-one votes. He means the Council, which at present consists of nine members, five appointed by the Principal Allied and Associated Powers (of which the United States may be but is not yet one, as it has neither ratified nor adhered to the League as yet), and four members to be elected by the Assembly. They were appointed by the Conference of Paris until an Assembly of the League should be held. They are a representative of Belgium, Brazil, Greece and Spain. That is to say, at most two American members, supposing that the United States enters the League and that either Brazil or some other American state is elected to the Council.

In view of the fact that the "validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace," to quote the exact language of Article 21 of the Covenant, is not to be affected by anything in the Covenant, an American League is, in Dr. Brum's opinion, necessary. It would have been necessary if there had been no universal league; it is doubly necessary now that a universal one has been created.

But Dr. Brum's views on this point should be given in his own words. He says:

The organization of this League is in my opinion a logical sequence to the Versailles Treaty of Peace, which in recognizing and expressly accepting the Monroe Doctrine, seems to be desirous of limiting its sphere of action as far as American affairs are concerned.

On the other hand the Supreme Council of the League of Nations is formed, principally, by the delegates of the Great Powers, having excluded from it nearly all the American countries. These countries need therefore organize a powerful organization that will look after their interests in the decisions arrived at by the League of Nations, and that organization can be no other than the American League, based on the absolute equality of all the associate countries.

The American League would therefore have the following double purpose:

Occupying itself with the conflicts with the extra-continental countries, and besides, of those that might arise amongst the associate countries.

The first purpose would greatly benefit the countries of the League by means of a powerful organization, which would act in the interests of their rights. As far as the second is concerned the harmonious and just action of the American League would avoid European intervention in our affairs.

Why not strengthen the Pan-American Union, composed of an official representative of each of the American Republics on a footing of absolute equality, instead of another body?

To which Dr. Brum could, New England fashion, ask in turn: Why not strengthen the Hague Conferences composed of official representatives of each member of the Society of Nations on a footing of absolute equality instead of another body?

The undersigned is unable to answer this question, but he can and he does commend Dr. Brum's address to American and foreign readers.

JAMES BROWN SCOTT.

TWO NEW JOURNALS OF INTERNATIONAL LAW

Every journal of international law is a step towards the rule of law between nations and the founding of every review of international law is in this sense an event of no mean kind. There will one day be a strong and influential society or academy of international law in every American Republic, and it is to be hoped that there will be a journal or review of international law issued as the organ of each such society or academy. Of course we know and insist that international law is universal and that it cannot differ in different countries without ceasing, to that extent, to be international law. Why then advocate a magazine for a system of law, admittedly universal, in each American Republic. Why confuse the reader with twenty-one periodicals for a continent when one would suffice? The answer is not difficult. Each prefers his own, "a bad child, but mine own," said Shakespeare. "A good child and mine own," every one of the Republics of America will be able to and therefore one day will say, This is the personal factor which makes us cling to our own family, our own country, our own Continent.

There are other reasons. One is that the rules of international law are not self-interpreting. In the absence of a higher authority, such as an international court of justice, every nation is bound to interpret

them. Even if and when such an international court is established, each nation will have to continue to do its own interpreting, as it is likely that only a dispute will find its way to the international court after diplomatic means of settlement have been exhausted. The national view has a right to existence and to be set forth at home and abroad by international lawyers in reviews and journals of international law. *In certamine veritas.*

Another reason is that democracy needs a schoolmaster. It may choose the unfit and put up with its choice, but foreign nations insist upon the application of the rules of law in their mutual intercourse. The review or journal of international law is the means of reaching the electorate, just as needful and as legitimate as the newspapers. It is perhaps not improper to remark that in Germany before the war there was a dearth of international law and few professors of that just and noble branch of learning who devoted themselves exclusively to its study and to its diffusion. We cannot insist upon international law abroad if we do not honor it at home. Therefore, every society of international law is a nursery of peace, and every review or journal of international law is a guarantee of justice.

This by way of introduction to a hearty welcome from the AMERICAN JOURNAL OF INTERNATIONAL LAW to the *Revista Mexicana de Derecho Internacional* and the *Revista Argentina de Derecho Internacional*, the two most recent accessions to the fraternity of international law journals.

On March 31, 1919, some leading publicists of Mexico founded in the City of Mexico a Mexican Academy of International Law, having for its objects the exchange of ideas between all persons in Mexico who pursue the study of international law, to promote the study and diffuse the knowledge of the subject, to advocate justice as the governing factor in international relations, to work for the improvement of international law, and coöperate in its codification, to study and discuss its problems with particular reference to Mexico and the American Continent, to encourage the publication of books on the subject, and organize lectures to discuss special topics, and finally to publish a journal and establish a library of international law.

The following prospectus discloses the hopes of the founders of the new journal:

This *Journal* is published to promote the objects of the Mexican Academy of International Law. In Mexico, where we have, in the past, paid very little

attention to such matters as refer to international law, lawyers and men of learning, as a rule, do not concern themselves with the latter, with the result that the board of editors of this *Journal* is mostly made up of a few enthusiasts and lovers of this branch of knowledge. Deficiencies in our book will not therefore be uncommon; it is always difficult to start; even more so if we take into consideration the fact that this *Journal* is the first one of its nature ever published in Mexico.

We shall endeavor to study the most recent and important international problems, particularly those affecting Hispanic America, unbiased, free from all political and personal inclinations extraneous to the science.

Mexican and foreign articles consistent with our program will appear in this *Journal*, and we shall reprint all documents and news tending to endow the Mexican public with an ample and thorough knowledge of international events and acts, at present the privilege of experts only.

Let us labor, in short, for the progress of international law and a widespread knowledge of the same, interesting and illustrating the public in its development. The science which clamors for the fraternity of nations is well deserving of careful study.

The first number of the *Revista* made its appearance in March, 1919, under the editorship of Dr. Genaro Fernández MacGregor and has since appeared quarterly in the months of June, September, December and March. The first four numbers issued during the year 1919 made a stately volume of 750 pages, and the editor-in-chief and his associates are to be congratulated upon their success. One needs to have faith to start a journal which can only make a limited appeal, when the rewards can only be the consciousness of serving the cause of justice, and where the expenses of publication are too often taken from the slender pockets of the enthusiast.

We are now in receipt of a prospectus, dated July 1, 1920, issued by the Argentine publicist, Professor José León Suárez, of an Argentine Review of International Law. It seems that, in undertaking this worthy enterprise, Dr. Suárez was animated by the results of the conference of international law teachers held in Washington in connection with the annual meeting of the American Society of International Law in 1914. In referring to that conference, Dr. Suárez quotes the opening remarks of the Honorable Elihu Root, President of the Society, that instruction in international law "is not a mere matter of book learning; it is not a mere matter of science; it is a matter of patriotic duty," in view of the increasing control of democracy in the management of government. Dr. Suárez was also impressed with Mr. Root's statement on the same occasion that "half

the wars of history have come because of mistaken opinions as to national rights and national obligations, have come from the unthinking assumption that all the right is on the side of one's own country, all the duty on the side of some other country." Because of which Dr. Suárez advises: "Let us study all the problems which may arise, establishing a distinction between international law and international politics."

As to the character of the new journal the prospectus says:

The character of the *Journal* will correspond to the principles which its Editor-in-Chief has expounded in his teachings and books. As international law is, by definition and in its essence, of a universal character, juridical matters will of course be dealt with from a universal point of view. Special preference will be given, however, to American and Argentinian matters, but this circumstance will not imply that any distinction is thereby established between continents or races. The *Journal* will resolutely oppose every tendency toward isolation of the American Continent in respect to Europe, although it deems its direction perfectly reconcilable with Pan-Americanism, with Ibero-Americanism, and with the juridical society of nations.

The editor plans to include in his journal leading editorials, a chronicle of international events, a bibliography of international law, a course in diplomatic law taken from his lectures as professor of law in the University of Buenos Aires, the texts of important diplomatic documents, and lists of the American diplomatic corps. He also promises contributions from the most distinguished writers.

The JOURNAL OF INTERNATIONAL LAW of the extreme North welcomes the Reviews of International Law of Mexico and Argentina. It wishes the newcomers in the field the greatest success. Mexico and Argentina need them, America needs them, and the world needs them.

JAMES BROWN SCOTT.

HEINRICH LAMMASCH (1853-1920)

On January 7, 1920, the Republic of Austria lost its most distinguished citizen, the University of Vienna one of its most influential professors, and international law one of its most eminent exponents in the person of Heinrich Lammasch, who died on that day in the ancient and beautiful city of Salzburg, birthplace of Mozart and capital of the Austrian Duchy and Crownland of Austria.

His life of sixty-seven years was full of achievement, and notable as were his services to his country, they could and would have been greater if the supreme opportunity had come to him earlier. Had his views as to the policy of Austria prevailed before the World War, or even during it, there might have been a great and powerful federation of nations composed of the peoples chafing under the yoke of the Dual Monarchy. In consequence of the World War they are indeed independent, but facing the old problems which had confronted them in the earlier days before their absorption into the domains of the Hapsburgs. Each stands by and for itself and they may "fall together." The future will show. The hope of Dr. Lammasch was that these various groups should form individual and separate nations, united upon a footing of equality in a confederation of states, under the dynasty of the Hapsburgs. Without the war this might have been feasible; in the first two years of the war, perhaps even in the course of 1917, this might have been possible; in the last days of October, 1918, when Dr. Lammasch became Prime Minister of Austria, it was impossible. The groups of peoples of which the Austro-Hungarian Monarchy was composed had grown weary of the war. They had broken or were breaking away from Austria; they had or were setting up for themselves or planning other combinations from which Austria and Hungary were excluded.

The late Emperor Karl had wished to make Dr. Lammasch premier in 1917, but the military party, which he had always opposed, and the Pan-Germanists, who always opposed him, would not hear of it. Would he have succeeded, could he have succeeded if he had been appointed then? We can never know.

In the field of international law Dr. Lammasch was more fortunate. Indeed in the administration of international law he was remarkably successful. He was technical delegate of Austria-Hungary to the First Hague Peace Conference of 1899 and to the Second of 1907, in both of which he rendered valuable but inconspicuous service. He was a member of the arbitration section of each, and in the Second Conference he showed himself a consistent advocate of compulsory arbitration. In the closing days of the Conference he was, however, silent, as Germany had forced Austria-Hungary to forsake the camp of arbitration and to oppose the proposed treaty of arbitration, which the overwhelming majority wished to but could not pass over Germany's opposition. It would have been better for Austria-Hungary

if it had followed the advice of its technical delegate and broken then and there with Germany on the subject of arbitration.

As a reward for his services at the First Conference, Dr. Lammasch was appointed by the Dual Monarchy a judge of the Permanent Court of Arbitration at The Hague which he had helped to create. His character and attainments were not only appreciated by his colleagues, but respected by foreign countries to such an extent that he was called upon to serve as a judge in four disputes submitted to the Court of Arbitration, and in no less than three of these cases he was president of the tribunal. These were (1) the Venezuelan Preferential case between Germany, Great Britain, Italy and Venezuela, decided on February 22, 1904; (2) the Muscat Dhows case between France and Great Britain, decided on August 8, 1905; (3) the North Atlantic Coast Fisheries case between Great Britain and the United States, decided on September 7, 1910; (4) the Orinoco Steamship Company case, decided on October 25, 1910. In these last three cases he was either president or umpire.

Dr. Lammasch was not therefore merely an advocate of peaceful settlement; he was a tried and trusted worker in this vast domain.

In the field of theory he has been as marked, indeed more active than in practice. He has delivered address after address on arbitration; he has issued pamphlet after pamphlet on the same subject, and he has written not a few monographs on the theory, practice, history and development of arbitration as applied in the past and as, in his opinion, it should be in the future. As a friend of peaceful settlement of international disputes, he was opposed to the Austro-Hungarian ultimatum to Serbia, and to the war or rather series of wars which was the logical if not inevitable consequence of that rash, unjustified and unjustifiable act. During the wars he came out strongly against the violations of international law which the Central Powers were committing in the conduct of their wars; he opposed Pan-Germanism and its program of annexations; he raised his voice against the campaign of hatred in which his own countrymen and the peoples of other belligerent countries were engaged, and he advocated the conclusion of the wars upon just principles. He accepted President Wilson's leadership, approved his fourteen points and his Peace Plan, translating into German and publishing his speeches and letters dealing with international peace, including the speeches at the Paris Peace Conference up to and including the one reporting the

first draft of the Covenant of the League of Nations on February 14, 1919.

Professor Redlich, in a brief address delivered on February 14, 1920, before the Austrian Society for the League of Nations, founded by Dr. Lammasch and of which he was honorary president, relates an interesting anecdote of his admiration for Mr. Wilson. When Professor Redlich was a student at the University of Vienna, in 1889-90, he took Professor Lammasch's courses, and he recalls that, in the first lengthy conversation which he had at the home of his teacher, Dr. Lammasch, who was also a great reader of English and American works, took a small volume from a book-shelf, handed it to the young man saying, "Take this and read it, it is a good work." It was Mr. Wilson's doctor's thesis on *Congressional Government*. Professor Redlich says that he often thought of this in later years when Mr. Wilson's name "filled the world." Later Dr. Lammasch was disappointed with the way things went at Paris, and well he might be; but he was apparently unwilling to blame the American President for many of the things that happened, saying that we do not as yet know what Mr. Wilson did, especially how much he prevented Mr. Clemenceau from doing.

Dr. Lammasch was an unwavering advocate of a league of nations. He did not believe it necessary to federate the world or to create a super-state. There should be a close and intimate coöperation of the states, which should bind themselves to peaceful settlement through commissions of enquiry, tribunals of arbitration and courts of justice. The obligations assumed should be enforced, as he ultimately came to the conclusion that the world could not rely alone on moral suasion, and required a physical sanction. In his scheme, however, the League was to be governed by law, as were the nations. The work of the Hague Conferences he always respected. They should be continued, and he could not understand why the Covenant contained no reference to them and why it did not provide for their continuance. He felt it to be unfortunate that the Hague Conventions were not specifically mentioned as remaining in force, although he did not doubt that they were. He was also disappointed at the casual way in which Article 14 of the Covenant referred to a proposed Court of International Justice. Still, however, he stood by the League, and in the little book which has appeared since his death,

Völkermord oder Völkerbund, he expressed the opinion that the choice lay between suicide or a league of nations.

He never lost faith in the triumph of justice between nations, and he confessed his belief, not once but many times, that international law would be taken up at the end of the war, where the war found it, and developed to meet the future needs of nations. Perhaps the best statement of his views as to this is an article in the *Deutsche Revue* for November, 1914, on International Law and the War:

Just as Moltke, upon the day following the battle of Sedan, returned punctually to his game of whist, which had been interrupted for several days, and merely said: "After this incident we will continue our game," so the scholars of the various states now at war will after the conclusion of peace meet at the customary time to resume their work, which was interrupted by the unpleasant episode, at the point where they were compelled to abandon it. Only the place of the meeting will at first probably be transferred for reasons of caution to a country which has remained neutral, in order that the *profanum vulgus* may not disturb it.

As soon as the thunder of the cannon has died away, the solidarity of the *human* interests, the conscience of which was dimmed in the minds of many during the war, will again become apparent to all.

Heinrich Lammasch was a great and good man and it was a misfortune for him, his country and the world that his advice was not listened to while it was still time, and that when he came to power it was too late.

It is never too late to furnish a good example, and that Dr. Lammasch did.

JAMES BROWN SCOTT.

ALPHEUS HENRY SNOW (1859-1920)

In the death of Mr. Alpheus Henry Snow in New York City on August 19, 1920, the American Society of International Law has lost a friend of long standing and a valuable co-worker. Mr. Snow had been a member of the Society since the first year of its organization in 1906. As a member of its Executive Council, to which he was elected in 1910, he took an active part in assisting in the direction of the Society's affairs, rarely being absent from the meetings of the

Council. He also took an active interest in the public annual meetings of the Society and made some valuable contributions to the columns of the Society's Journal.

He was born in Claremont, New Hampshire, on November 8, 1859. After graduating from High School, he spent the years of 1876 and 1877 at Trinity College, Hartford, and entered Yale University, from which institution he graduated in 1879. Adopting law as a profession, he entered the Harvard Law School, from which he received the degree of Bachelor of Laws in 1883. Practising for a while in Hartford, he settled in Indianapolis, where he became a member of the firm of McDonald and Butler, the senior partner of which had been United States Senator.

During the course of his active practice, Mr. Snow appeared in the Supreme Court of the United States and argued the case of *Indiana v. Kentucky* in 1890, on behalf of the State of Indiana (reported in 136 United States Reports, 479). He was therefore trained in municipal law and that larger law that obtains between the States of the American Union.

Withdrawing from the active practice of his profession, although he never lost interest in or touch with the law, he settled in Washington with his wife, Mrs. Margaret Butler Snow, the daughter of Mr. Snow's senior partner, and gave himself up to a life of scholarly investigation and of scientific and literary activity. Here, the American Society of International Law was fortunate to enlist his interest. He was also interested in the American Society for the Judicial Settlement of International Disputes, before which organization he delivered a number of addresses and he also wrote a number of articles for its quarterly. He was deeply interested in the movement for international peace from its legal aspect, and made more than one notable contribution to the cause. In 1910 he was American delegate to the International Conference on Social Insurance held at The Hague.

The Bar Association of Indianapolis was well advised when it said in its resolution that

Mr. Snow was greatly interested in Government by Nations advanced in civilization of semi-civilized and barbarous peoples and gave years of close study and laborious effort to the methods by which England, France, Holland, Germany, Spain and Portugal governed their colonies. He published the results of his investigations in two books, which are of the highest authority, and which, while not popularly known, are of infinite service to those charged with the administration of affairs in the Philippines, Porto Rico, the Canal Zone, Haiti and

Dominica, the Virgin Islands and such of the Pacific Islands as are under our jurisdiction.

The first of the books referred to appeared in 1902, and discussed the problems arising from the recent acquisition of our insular possessions after the Spanish-American War of 1898. The volume is entitled *The Administration of Dependencies* and its sub-title "A study of the Evolution of the Federal Empire, with special reference to American Colonial Problems." In the preface to this masterly work, Mr. Snow states that he was led to consider the subject by his belief that the clause of the Constitution by which Congress is given the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," the only one in the Constitution dealing with the question, must have expressed on the part of its framers "the true principles of the administration of dependencies," since the Union was to govern for years to come territory to the west of the thirteen original States outside and beyond the sphere of influence of any one of them, but within the territory of the United States and subject to the Government of the Union created by the Constitution. The author stated that his "inquiry necessitated a careful examination of the issues of the American Revolution, and . . . my investigation extended back to the inception of the American Colonies in 1584. . . . I then examined the American, British, and European theory and practice from the adoption of the Constitution until the present time. The whole inquiry," continued Mr. Snow, "thus became a study of the evolution of the Federal Empire—a form of political organism which, though commonly believed to be of modern origin, was in fact more clearly understood by our Revolutionary leaders than by any other statesmen before or since their time, and which was recognized by them as being not only necessary and proper, but also beneficent in its operation, and hence desirable, for America as well as for other States." From these exhaustive inquiries he drew the conclusion that:

The people and lands of the American Union and the people and lands of its dependencies constitute a Federal Empire, and that the people of the American Union, by their written Constitution consented to by all the people of the Empire, have divided the governmental power under an unwritten Constitution, so that the Union is the Imperial State as respects the dependencies, standing in a federal and contractual relation to them, and having neither unconditional nor unlimited power over them, but only a power of disposition—which implies

adjudication as a prerequisite, and in which is included the power to execute its adjudications by all needful rules and regulations. . . .

His conclusions as to the administration of dependencies was

That the habitual and daily administration of the dependencies of the American Union should be in charge of the President, assisted by expert investigators and advisers, and that the superintendence and final control of the administration should rest with the Congress, subject only to the final judgment of the whole people of the American Union, expressed at the polls.

The second of Mr. Snow's volumes appeared in 1918 under the title *The Question of Aborigines in the Law and Practice of Nations*. This study was undertaken at the request of the Department of State of the United States, for use at the impending Peace Conference at Paris. In the brief note prefixed to his study, which has only recently been made public, Mr. Snow said, and truly, that, "The author has discovered no treatise on the question, nor even any chapter in any book on international law or the law of colonies, to serve as model or guide. He has therefore been compelled to develop the subject and arrange the authorities according to his own judgment." It is, as Mr. Snow's colleagues at the bar would say, "a case of first impression." It should not be summarized. The little book of only 217 pages should be read and studied by all interested in the subject. It is the only monograph on the subject and it is safe to predict that it will not have a rival for many a day.

Among the various articles which Mr. Snow contributed from time to time to periodicals of a scientific nature, and which should be brought together and preserved in a companion volume to his two larger contributions, are: "Neutralization versus Imperialism" (*American Journal of International Law*, for 1908); "The Law of Nations" (*ibid.*, 1912); "International Law and Political Science" (*ibid.*, 1913); "The American Philosophy of Government and Its Effect on International Relations" (*ibid.*, 1914); "The Development of the American Doctrine of Jurisdiction of Courts over States" (*Judicial Settlement Quarterly*, 1911); "Judicative Conciliation" (*ibid.*, 1916); "The Shantung Question and Spheres of Influence" (*The Nation*, New York, September 20, 1919); and "A League of Nations According to the American Idea" (a paper read before the American Association for the Advancement of Science on December 30, 1919, and printed in the *Advocate of Peace*, January, 1920).

His paper on "Judicative Conciliation" is especially interesting at this time when the nations are groping for some peaceful means of settling their disputes. Mr. Snow shows the relation of his proposed institution to arbitration and judicial settlement:

Judicative conciliation is to be distinguished from either arbitration or the judicial action of a court. A commission of judicative conciliation, whether in the imperfect form described in Article XIV of The Hague Convention or in the perfect form as manifested by the tribunal in the North Sea Incident, differs from a tribunal of arbitration in this: The finding of facts and the judgment or opinion of a tribunal of judicative conciliation are advisory only, and the parties are free to accept or reject them, so that it is the parties themselves who finally settle the matter by their voluntary agreement; whereas arbitration implies an obligation of the parties to accept and faithfully carry into effect the award of the arbitration tribunal. . . . Arbitration, therefore, cannot properly be classified as a conciliative process. This essential feature of implied obligation to accept the award, even if it does not require arbitration to be classified as a compulsive process, since the nations are free to arbitrate or not to arbitrate, nevertheless distinguishes arbitration from judicative conciliation.

A commission of judicative conciliation is clearly different from a court. A court is the judicial organ of a society organized compulsively as a state. A court exists and acts under the constitution and laws of the state and has the function of finding the facts in cases duly brought before it and of applying to the finding of facts the principles established by the state as its law. A court implies a legislature and an executive, and a constabulary under their control to enforce the laws, the executive decrees, and the judgment of the court. A court, therefore, is an organ of a society organized on the principle of compulsion, for the purpose of applying compulsion like any other organ of the state. Judicial action and judicative conciliation are, therefore, distinct from each other.

And he showed the cautious yet progressive spirit by which he was animated in the concluding sentences of the article:

Arbitration is an established process. If nations can settle their disputes peaceably by arbitration, by all means let us encourage them to do so. If a court of the society of nations can be established without converting the society into a federal state, or if we believe that such conversion is practicable and desirable, let us press for the establishment of the court. All that is intended to be said in this paper is that in the great work of promoting the judicial settlement of international disputes we should not overlook the possibilities which lie in judicative conciliation, both in its imperfect form of "inquiry" under the definition of Article IX of the Hague Convention for Pacific Settlement and in its perfect form of judicative conciliation as manifested in the settlement of the North Sea Incident. It is always wise to hold fast to all that has proved itself good in many instances; therefore, we must hold fast to arbitration. It is

also wise sometimes to plan for a revolutionary change. Therefore, we may plan for a court of the society of nations; though the burden is in that case on us. But it is certainly also wise to hold in mind and consider carefully that which has proved good even in one case, for it may be that, if carefully studied and more generally applied, it will be found useful in many other cases.

The results of Mr. Snow's keen analysis of the Covenant of the League of Nations are also of very timely interest now. They were expressed in his article on "A League of Nations According to the American Idea," as follows:

The so-called "Covenant of the League of Nations" has the form of a treaty, but it is something different from and more than a treaty—that is to say, it is a constitution. It was, in fact, originally so-called. If adopted, it would constitute a new composite body politic and corporate, which would be a union of states, of which the United States would be a member. This new body politic and corporate would have a political and legal personality distinct from that of the United States. It would have a specific name—the League of Nations. It would manifest its personality through a common organ, which would sit in two divisions—one called "the Council," and the other "the Assembly." To this common organ the constituent states would delegate specific political and corporate powers, thereby renouncing the exercise and wielding of these powers to the common organ. The act of ratifying any treaty which contains this "covenant" would be an act of consent on the part of the United States to enter into a union with foreign states, and for a period of time more or less definite to participate and partially submerge its personality in this new union. The power which the United States would exercise in entering into and participating in the union would not be the treaty power proper, but the analogous but vastly greater power of union. Specifically the power thus exercised would be the power of political union, the supreme phase of the power of union.

The obligations under the Covenant of the League of Nations are opposed to the American Idea in at least the following respects:

First. The Council and the Assembly are said to have the function of "advising" the member states; but in giving this advice they are not required to observe the fundamental law or any principles whatever. The member states "covenant" to follow the "advice." "Advice" given by one person to another who is obligated on oath to follow the so-called "advice" is command, not advice. When no principles are laid down as obligatory on the adviser, and the person advised binds himself to follow the advice, the power of so-called "advice" is the power of absolute command, in disregard of the fundamental law.

Second. The Covenant defines aggression and wrongdoing in terms of warlike action, whereas the only aggression recognized by the fundamental law is that which occurs when states or governments deprive persons of their fundamental rights without due process of law. Such aggression, and such only, is an aggression against all other states. Each state may properly protect itself against such

an aggressor state, by war if necessary; and all states are in duty bound, under the fundamental law, to correct by their joint influences and strength such an aggressor state. To regard a state which makes war on such an aggressor state as the real aggressor is to render the League an agency of perversion and injustice.

Third. The Covenant places the power to direct the activities of right-doing states and to correct the activities of the wrong-doing states in the same body of men—an arrangement which in fact makes this body of men at once a legislature, a court, and an executive. Such a combination of functions in one person or body invariably results in absolute government. The fact that the League provides for a Council and Assembly is of no consequence, since in each of them the two functions are similarly confused.

Whether we agree or not with Mr. Snow's ideas on the subjects which interested him and upon which he wrote, we must agree that he was a publicist in the truest sense of the word, a clear thinker, a careful writer and a man to whom truth as he saw it, whether it be agreeable or not, was the chief thing in life. Quietly, modestly and earnestly he set himself to the task of mastering his chosen subjects and publishing the results of his labors for the benefit of fellow-student, practical administrator, or general reader.

We are better for such men, and such men do not live in vain.

JAMES BROWN SCOTT.

CURRENT NOTES

THE WORK OF THE LEAGUE OF NATIONS¹

The inauguration of the League of Nations took place at Paris in the Ministry of Foreign Affairs on January 16, 1920. Representatives of the eight members of the Council, exclusive of the United States, namely, Belgium, Brazil, the British Empire, France, Greece, Italy, Japan and Spain, formally met, elected M. Leon Bourgeois, of France, the first chairman of the Council, and proceeded to organize the machinery for the practical execution of the clauses of the Treaty of Peace, the urgent necessity of which, the chairman explained, made it impossible further to postpone the meeting of the Council. The Treaty went into effect on January 10, 1920, and on that date the various periods prescribed for carrying out its provisions began to run.

The meeting had been convened by the President of the United States, pursuant to Article 5 of the Covenant of the League. Commenting upon the absence of a representative of the United States, M. Bourgeois said: "We respect the reasons which still delay the final decision of our friends in Washington, but we may all express the hope that these last difficulties will soon be overcome, and that a representative of the great American Republic will occupy the place which awaits him among us. The work of the Council will then assume that definite character, and that particular force which should be associated with it."

Subsequent to the inaugural session meetings were held in London, February 11-13; Paris, March 13 and April 9-11; and Rome, May 14-19, 1920.

At the London session the following important announcement re-

¹ The information given in this note is taken from the *Official Journal* of the League of Nations, Nos. 1-4, covering the months of February to May, 1920.

garding publicity for the work of the Council was made by Mr. A. J. Balfour, who presided over that session:

After consultation with M. Bourgeois and with my other colleagues, we have come to the conclusion that the details of our work cannot with advantage take place in an open assembly. We recognize the extreme importance, and indeed necessity, of publicity in the true and useful form of that phrase, but the actual detailed discussion we believe can only be carried on with that perfect freedom which is desirable—I even go further, and say necessary—if the work is to be efficiently done. The course therefore that we propose to take is to have this meeting, at which we are all here gathered together, an open meeting; then to resolve ourselves as it were into a committee and deal with the agenda in detail; then to have another open meeting, at which the general results of our labors will be communicated to the public, first to any who may be present in this room and through them to the public at large. That is the procedure which commends itself unanimously to my colleagues. I am convinced that it is the right procedure, and I trust that we shall be supported in that decision by the general verdict of public opinion.

The Saar Basin

The first business to come before the Council was the appointment of the commission to delimit the frontier of the Saar Basin. Under Article 48 of the Treaty of Peace, this commission is composed of five members, one appointed by France, one by Germany, and three nationals of other Powers to be appointed by the Council of the League. The Council accordingly, at its first meeting, appointed members from Great Britain, Belgium and Japan. The Governing Commission for the Saar Basin provided by the treaty was appointed at the second session of the Council, being composed of representatives of France, the Saar territory, Belgium, Denmark and Canada. The Council at the same time adopted a set of directions for the guidance of the commission. They are printed in the Supplement, page 360. The first report of the Governing Commission, submitted to the Council on March 25, 1920, stated that the commission assumed power on February 26 and on that date made its official entry into Saarbruck, which was chosen as the seat of the government.

The Permanent Court of International Justice

The next subject to receive the attention of the Council was the organization of a Permanent Court of International Justice, as provided for in Article 14 of the Covenant of the League. At the second

session, held in London, a report upon this subject was submitted by M. Bourgeois, which is reproduced in full because of its peculiar interest to the readers of the JOURNAL:

REPORT ON THE ORGANIZATION OF A PERMANENT COURT OF INTERNATIONAL JUSTICE

Submitted by M. Leon Bourgeois, French Representative

The League of Nations, like a group of individuals, can only exist if the rights of each member are scrupulously respected. Its aim is to establish a reign of justice in a world which has been convulsed by the most murderous of wars; the League must be founded on justice.

If justice is to reign, it must have a permanent instrument to its hand—it must take some tangible form which will make its existence felt among the peoples and give the support of its powerful, impartial and supreme authority to those whose weakness is only too often undefended.

In each state private individuals know where to find judges to whom they can submit their grievances, and who will settle justly the questions on which there is conflict. In addition to *national* courts of law, whose duty it is to administer the laws of each state within its territorial limits, there is room for an *international tribunal* entrusted with the important task of administering *international law* and enforcing among the nations the *cuique suum* which is the law which governs human intercourse. This international tribunal will take the form of a Permanent Court of International Justice, the early establishment of which is provided for in the Covenant of the League of Nations, though the preparations for the court are left to the Council of the League.

"The Council," runs Article 14 of the Covenant, "shall formulate and submit to the members of the League plans for the establishment of a Permanent Court of International Justice. This court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

This court of justice which is about to be established, whose general jurisdiction has thus been briefly described, has already been invested with certain definite powers by the Peace Treaty of Versailles and the other treaties modeled upon it. For instance, Articles 336, 337 and 386 of the Treaty of Versailles entrust to the tribunal set up by the League of Nations the investigation and solution of various problems concerning international waterways. Articles 415 to 420 and 423, on the organization of labor, bring within the jurisdiction of the court a matter which is still more important.

In order to give full effect to these stipulations, and to curtail the temporary measures which are considered to be necessary (see Articles 425 and 426), it is essential that consideration shall be given without delay to the formation of the Permanent Court of International Justice. For this reason the Council has been called upon to study this problem at its meeting today.

The idea of entrusting to a supreme tribunal the peaceable settlement of

disputes between nations and between governments is of the greatest antiquity. But until now this tribunal has engaged only in arbitration, which alone seems consistent with the sovereignty of states. In early days princes and towns in France and Italy submitted their differences to trusted arbitrators whose decisions they accepted in advance.

In the Middle Ages, not to mention the Greek Amphictyonic Councils and the courts of ancient Rome, interesting examples of international arbitration could be found. Kings of France, Saint Louis amongst them, Popes, jurists of the School of Bologna, were often chosen as arbitrators in the courts of that period.

In the last half-century particularly arbitration achieved its most valuable conquests. The settlement by arbitration at Geneva in 1872 of the dispute between Great Britain and the United States in the Alabama affair is within the memory of many of us; and subsequent settlements between 1872 and 1899 have happily put an end to dangerous disagreements which appeared incapable of solution but by the force of arms.

While becoming more and more frequent, arbitration was still only an incident in the life of nations; it knew no law but the convenience of states which, sure of their right or distrustful of their military strength, would consent to accept its verdict. Free as they were to accept or refuse the arbitrator's services, wholly free to select who those arbitrators should be, the Powers were no less free to settle the order of procedure suitable for the settlement of their disputes: there were times, indeed, when they found this liberty truly embarrassing.

The appointment of one or of several arbitrators, the constitution of a court of arbitration, the drawing up of the procedure to be followed in any particular suit, involved delicate negotiations and raised difficulties before which the states at variance often recoiled: a tendency which threatened to discredit the very principle of arbitration.

The Institute of International Law in 1874 and 1875 prepared draft rules of procedure for arbitration courts. The important conventions on the peaceable settlement of international disputes signed at The Hague in 1899, and again in 1907, went further. Though they left the disputing parties entirely free to apply, as before, to arbitrators of their own selection (Convention of 1899, Article 21; Convention of 1907, Article 42), they put at their disposal an organized body of arbitrators ready to take up their duties and, according to a procedure carefully laid down beforehand, to deal with grievances submitted to them. This is the Permanent Court of Arbitration, with its seat at The Hague. Article 20 of the Convention of 1899, reproduced in Article 41 in the Convention of 1907, defines clearly the part assigned to the new tribunal. "In order to facilitate *immediate* appeal to arbitration for international disputes which diplomacy has failed to settle, the signatory Powers undertake to set up a Permanent Court of Arbitration, available at all times and operating, unless otherwise desired by the contending parties, according to the rules of procedure in the present convention."

The Permanent Court of The Hague does not consist of a fixed number of magistrates invested with public duties, sitting periodically, if not continuously, waiting for litigants, and always ready, as national courts are, to decide disputes submitted to them. As a matter of fact, the only permanent feature of the court

is the International Office, which acts as its registry and as the necessary channel for all communications concerning its meetings and general work.

There is also a governing body composed of diplomatic representatives of the contracting Powers, accredited to The Hague, and presided over by the Minister of Foreign Affairs of the Netherlands. It is the duty of this council to draw up the rules necessary to insure the satisfactory working of the Court of Arbitration, and the International Office is placed under its direction and control. The court, properly so called, consists of a panel or list of men of the highest moral standing—not more than four from each state—from amongst whom the contending parties are permitted to make their own free choice of the members of the tribunal to give judgment in their disputes, without the slightest obligation to limit their selection in any way to the official arbitrators proposed to them.

The court of The Hague is not, therefore, really a permanent tribunal and has not the special character of a court of justice. It has, nevertheless, made considerable progress on the previous system of arbitration.

No one would wish to belittle a system of international justice which has already brilliantly justified its existence, nor restrict the field of arbitration, and close the doors of the court of The Hague. But as early as 1907 the attention of the Peace Conference was drawn to the advisability of creating a really permanent tribunal, working either as a part of the court already set up at The Hague, or side by side with it, with the object of giving to the future decisions of international judges the unity and the stability which the awards of arbitrators had hitherto lacked. The United States suggested that a court should be set up entirely separate from that of 1899, sitting in regular and continuous session. This scheme, which was adopted by the conference, may be thus briefly described:

The Court of Justice consists of a *small number* of judges and deputy-judges nominated for twelve years; they shall be eminent lawyers of the highest reputation, of recognized authority on questions of international law. They will be required to take an oath or make a solemn declaration, and will receive remuneration for their services. The court shall have its seat at The Hague and will meet once a year. A delegation of three judges, appointed annually by the court, will deal with urgent matters requiring prompt settlement, and will, if necessary, conduct inquiries. Further, the scheme of 1907 leaves a purely optional authority to the court for whose organization it is responsible; it maintains, in its general outline, the procedure fixed in 1899 for the arbitration tribunals, but it is careful to lay down that the decisions of the new tribunal shall be based on the evidence of reason.

On all these points agreement was easy; it was not so, however, when it became necessary to decide how the members of the court should be appointed. The number of judges had necessarily to be restricted, and there could be no question of giving a representative to each of the forty-four states which had taken part in the work of the conference. How was a choice to be made between Powers of equal sovereignty, equally jealous of their prerogatives? Should the selected judges, to the number of, say, fifteen or seventeen be chosen for their ability and without distinction of nationality by the general assembly of the Court of Arbitration or by the representatives of the states? Should they be

drawn by lot for each case from amongst representatives nominated by each of the forty-four states invited to the conference? Would a rotation-roll be possible, as was proposed by the United States and decided for the International Prize Court, each of the great Powers to have a permanent judge, whilst the others would have a judge only for a number of years commensurate with their importance? On this question, which threatened the very principle of the legal equality of nations, the conference could arrive at no definite conclusion; it therefore gave up the idea of organizing the court itself, the principle of which it approved, and contented itself with inserting in the final report of its labors a hope expressed in these words: "The conference recommends to the signatory Powers the adoption of the annexed convention and scheme for the establishment of a Court of Justice by Arbitration and for its putting into force as soon as an agreement has been reached on the nomination of judges and the constitution of the court."

It rests with the League of Nations, the outcome of the War of Nations, to realize today this hope which the Institute of International Law expressed at its meeting at Christiania in 1912. Moreover, circumstances are singularly favorable for its immediate realization. From all parts of the devastated and tormented world rises a cry for justice. The military and moral unity which for five years has held the free peoples together, and concentrated their efforts in the defense of the right, must survive with our victory; it can find no nobler expression nor a more splendid symbol than the establishment of a *Permanent Court of International Justice*. This instrument of the League of Nations, this court, however composed, will be free from all national preoccupations, particularly the exercise of its sovereign jurisdiction; and the intervention of the Council or even of the Assembly, in the choice of its members will be calculated to remove all anxieties and guarantee against all attack the guardian principle of the equality of nations. How is this problem to be solved? How shall the Permanent Court be organized? How shall its members be nominated? In what country, in what city, shall this new tribunal have its seat? Is it possible to specify now the rule of procedure to be followed in the investigation and trial of the cases to be brought before it, or shall this duty be left to the court itself? Such, amongst many others, are the principal problems set before us by the mandate which Article 14 of the Covenant of the League of Nations has entrusted to us. It seems that the study of them may usefully be entrusted to a commission of legal experts, whose conclusions will be brought up and discussed at one of our next meetings. The duty assigned to our collaborators will be facilitated by the extensive researches initiated in various countries by the unfinished work of The Hague. The reports at the Conference to which the problems of the composition and procedure of the Permanent Court often gave rise in 1907 will form the natural point of departure for their inquiry. This inquiry will lead them to prepare a scheme designated to satisfy absolute justice, to conciliate the legitimate interests of nations, to crown in the happiest manner possible the evolution of centuries whose history we have related.

Accordingly, in agreement with the Secretary-General, we now have the honor

to propose the constitution of this committee, and the appointment of the following gentlemen to act as members:

Mr. Satsuo Akidzuki, former Ambassador of His Majesty the Emperor of Japan.

Mr. Rafael Altamira, Senator, Professor of the Faculty of Law of the University of Madrid.

Mr. Clovis Bevilacqua, Professor of the Faculty of Law of Pernambuco and Legal Adviser to the Ministry of Foreign Affairs of Brazil.

Baron Descamps, Belgian Minister of State.

Señor Luis Maria Drago, former Minister for Foreign Affairs of the Argentine Republic.

Professor Fadda, Professor of Law at the University of Naples.

Mr. Fromageot, Legal Adviser to the Ministry of Foreign Affairs at Paris.

Mr. G. W. W. Gram, former Member of the Supreme Court of Norway.

Dr. Loder, Member of the Court of Cassation of the Netherlands.

Lord Phillimore, Member of the Privy Council of His Majesty the King of England.

Mr. Elihu Root, former Secretary of State of the United States of America.

Mr. Vesnitch, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Serbs, Croats and Slovenes in Paris.

Upon motion of Mr. Balfour, the jurists named by M. Bourgeois were invited to serve upon the committee. The members of the American Society of International Law will be especially interested in the following remarks of Mr. Balfour singling out for particular mention the inclusion in the list of jurists invited of the name of the distinguished gentleman who has been the president of the Society since its foundation:

It will not have escaped the notice of anybody who has heard the list that in it is included the distinguished name of Mr. Root, the well-known American lawyer. It may be that Mr. Root for one reason or another will not find it possible immediately to accept, but the Council desire formally to put on record that Mr. Root will always be welcome at whatever stage of our proceedings he feels it within his power to add to our deliberations the great weight of his learning and his name.

All of the jurists who were invited accepted with the exception of Messrs. Akidzuki, Gram and Drago. At the fifth session of the Council the Secretary-General announced that Mr. Adatci had accepted in place of Mr. Akidzuki, and that the committee would be composed of ten members instead of twelve, five being nationals of the five great Powers and five nationals of five smaller Powers. Details of the work of the committee are given elsewhere in these columns, page 581.

The text of the draft scheme adopted by the committee is printed in the Supplement hereto, page 371.

International Régime of Ports, Waterways and Railways

The Council also at its second session took up the question of carrying out the functions of the League with reference to transit, ports, waterways and railways. A report upon this subject was submitted by M. Quinones de Leon, of Spain, who proposed that the Commission on the International Régime of Ports, Waterways and Railways, originally a part of the Peace Conference organization at Paris and continued in an advisory capacity with the addition of representatives of certain neutral Powers upon the invitation of the French Government, be requested to submit proposals for the formation of a permanent organization as part of the League of Nations and to act provisionally as adviser to the Council. The proposal was adopted, the commission accepted the invitation, and at the fifth session of the Council submitted a recommendation for the holding of a general conference on freedom of communications and transit to consider the principles to be followed in carrying out the Treaty of Peace, to elaborate general conventions concerning the international régime of transit, ports, waterways and railways, and to organize a permanent communications committee as a consultative and technical body to assist the Council and Assembly of the League in carrying out the treaty provisions entrusted to their supervision. The Council approved this recommendation and directed the issuance of invitations to members of the League to send representatives to the proposed conference at a place and date to be later decided.

International Health Bureau

At the second session, the Council adopted a resolution inviting the Health Commission organized by the British Government to constitute a conference, by the addition to its membership of international health experts, to prepare and submit to the Council proposals concerning the establishment of a permanent advisory and executive body. The invitation was accepted and an international health conference called to meet in London in April. At the meeting of the Council in Paris on March 13, a resolution was passed requesting the international health conference to deal with the emergency of epidemic typhus in

Poland and to submit to the Council plans for united official action.

The recommendations of the international conference were submitted to the Rome meeting of the Council and approved. A commission to combat the typhus epidemic in Poland was appointed and an appeal sent to most of the countries of the world, both members and non-members of the League, urging contributions toward a fund of two million pounds sterling, the minimum amount required to deal with the situation.

Danzig

The duties of the League with reference to the free city of Danzig came up for consideration at the second meeting of the Council. After receiving a report upon the subject by M. Paul Hymans, the Belgian representative, the Council adopted the following resolutions:

In view of Articles 100 to 108 of the Treaty of Versailles of June 28, 1919:

Whereas, the city of Danzig shall be established as a Free City, and

Whereas, the Free City of Danzig will be placed under the protection of the League of Nations, and

Whereas, a constitution for the Free City of Danzig shall be drawn up by the duly appointed representatives of the Free City in agreement with a High Commissioner to be appointed by the League of Nations, and

Whereas, this constitution of the Free City of Danzig shall be placed under the guarantee of the League of Nations; and,

Whereas, the High Commissioner of the League of Nations will also be entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City of Danzig in regard to the Treaty of Peace with Germany, signed at Versailles, 28th June, 1919, or any arrangements or agreements made thereunder:

The Council of the League of Nations hereby resolve that:

1. Sir Reginald Tower be appointed High Commissioner of the League of Nations at Danzig, as from the date of this resolution, be entrusted with the duties of High Commissioner, as mentioned above, and be invited to submit, in due time, the constitution of the Free City of Danzig to the approval of the League of Nations, in order that the constitution may be placed under the guarantee thereof.

2. The suggestions set forth in the attached memorandum ² in respect of the

² The memorandum referred to prescribes the duties of the High Commissioner as follows:

(1) To come to an agreement with the duly appointed representatives of the Free City with regard to its constitution. For this purpose he must be satisfied that the representatives of the city are in fact "duly appointed." The Treaty of Peace does not regulate the appointment of such representatives. It will be the duty of the High Commissioner to make proposals on this subject as soon as possible to the Council of the League of Nations. He must clearly arrange

High Commissioner of the League of Nations at Danzig be herewith agreed to.

3. Copies of the present resolution and of the memorandum be forwarded to the High Commissioner by the Secretary-General of the League of Nations.

Elections for representatives to frame the Danzig constitution took place on May 16, in accordance with procedure submitted to the Council by the High Commissioner and approved at its April meeting.

Polish Minorities Treaty

Under Article 12 of the treaty signed by Poland at Versailles on June 28, 1919, Poland agreed that the stipulations of the treaty affecting minorities constitute obligations of international concern and would be placed under the guarantee of the League of Nations. A report submitted at the second session of the Council by Mr. M. K. Matsui, of Japan, considered the question whether the League of Nations should undertake this guarantee. The Council adopted a resolution placing the said treaty stipulations under the guarantee of the League.

Admission of Switzerland to the League

The next business before the Council at its second session related to the admission of Switzerland to the League. Two difficulties presented themselves, one growing out of the inability of Switzerland to give a definite answer within the time limit set for acceptance because of the necessity of a plebiscite, and the other being due to the reservation of Swiss neutrality. The manner in which these difficulties were overcome is shown in the following resolution adopted by the Council admitting Switzerland to the League:

The Council of the League of Nations, while affirming that the conception of neutrality of the members of the League is incompatible with the principle that all members will be obliged to co-operate in enforcing respect for their engagements, recognizes that Switzerland is in a unique situation, based on a tradition of several centuries which has been explicitly incorporated in the law

that the representation of the inhabitants of the Free City, for the important work of drawing up the constitution, shall be based on as broad and democratic a basis as possible.

(2) To deal in the first instance with all differences arising between Poland and the Free City of Danzig in regard to the Treaty of Peace, or any arrangements or agreements made thereunder.

(3) To report to the Council of the League of Nations through the Secretary-General on all matters within his jurisdiction as High Commissioner. No mention of this is made in the Treaty of Peace, but it will clearly be necessary for the Council to be kept fully informed.

of nations; and that the members of the League of Nations, signatories of the Treaty of Versailles, have rightly recognized by Article 435 that the guarantees stipulated in favor of Switzerland by the treaties of 1815 and especially by the act of November 20, 1815, constitute international obligations for the maintenance of peace. The members of the League of Nations are entitled to expect that the Swiss people will not stand aside when the high principles of the League have to be defended. It is in this sense that the Council of the League has taken note of the declaration made by the Swiss Government in its message to the Federal Assembly of August 4, 1919, and in its memorandum of January 13, 1920, which declarations have been confirmed by the Swiss delegates at the meeting of the Council and in accordance with which Switzerland recognizes and proclaims the duties of solidarity which membership of the League of Nations imposes upon her, including therein the duty of coöperating in such economic and financial measures as may be demanded by the League of Nations against a covenant-breaking state, and is prepared to make every sacrifice to defend her own territory under every circumstance, even during operations undertaken by the League of Nations, but will not be obliged to take part in any military action or to allow the passage of foreign troops or the preparation of military operations within her territory.

In accepting these declarations, the Council recognizes that the perpetual neutrality of Switzerland and the guarantee of the inviolability of her territory as incorporated in the law of nations, particularly in the treaties and in the act of 1815, are justified by the interests of general peace, and as such are compatible with the Covenant.

In view of the special character of the constitution of the Swiss Confederation, the Council of the League of Nations is of opinion that the notification of the Swiss declaration of accession to the League, based on the declaration of the Federal Assembly and to be carried out within two months from January 10, 1920 (the date of the coming into force of the Covenant of the League of Nations), can be accepted by the other members of the League as the declaration required by Article 1 for admission as an original member, provided that confirmation of this declaration by the Swiss people and Cantons be effected in the shortest possible time.

International Financial Conference

The final item of business at the second session was the adoption of the following resolution proposed by Mr. Balfour, regarding an International Financial Conference:

The Council of the League of Nations in view of the declaration of the British Chancellor of the Exchequer of 11th February, 1920, concerning the possible participation of Great Britain in an international conference on the subject of the world-wide financial and exchange crisis decides:

(1) That the League of Nations shall convene an international conference with a view to studying the financial crisis and to look for a means of remedying it and of mitigating the dangerous consequences arising from it.

(2) A commission composed of members of the Council nominated by the president is instructed to summon the states chiefly concerned to this conference and to convene it at the earliest possible date.

Pursuant to these resolutions, M. Bourgeois reported at the May meeting that the following countries had been invited, on April 8, 1920, to send delegates to an International Financial Conference, to be held in Brussels, towards the middle of May, 1920:

Argentina	Japan
Australia	New Zealand
Belgium	Norway
Brazil	Poland
Canada	Portugal
Chile	Roumania
Czecho-Slovakia	Serb-Croat-Slovene State
Denmark	South Africa
France	Spain
Greece	Sweden
Holland	Switzerland
India	United Kingdom
Italy	

He also reported that an invitation had been sent to the United States of America to send representatives to the conference or to take part in the work, and that other states not included in the list had been invited to send information and to make recommendations to the conference, the Council to decide on the conditions under which they might be heard. The agenda of the proposed international conference was also outlined. It called for the communication by the Allies of their decisions on reparations and war debts, and written statements from each country setting out its situation and policy with regard to external debt, public finance, and foreign trade, the receipt of this information to be followed by discussions on internal financial policy, including taxation, internal debt, currency and exchange regulations, and further discussions in regard to restoration of trade balance, including the effects of depreciated exchange, import restrictions, export policy, economic conditions of recovery and foreign credit facilities. At the conclusion of M. Bourgeois' report, the Council appointed M. Gustave Ador, of Switzerland, president of the proposed International Financial Conference.

Commission of Inquiry to Russia

The third session of the Council, held at Paris in March, was for the purpose of considering an appeal made by the International Labor Office through the Supreme Council for the sending of a commission to investigate conditions in Russia. The appointment of such a commission was authorized by the Council and an inquiry directed to be sent by radio asking whether the Russian Soviet authorities were prepared to receive the commission and to afford it the necessary immunities and facilities for its work. No reply was received to this request, which was sent on March 17, but upon its being repeated by the Secretary-General of the League on May 1 a reply, dated May 13, was received from the Central Executive Committee of the Soviets of Russia communicating the contents of a resolution which criticised the action of certain members of the League in making war on Russia and the failure of the League "officially to communicate the fact of its existence to the Russian people" or to oppose the action of Poland in attempting to seize Russian territory. The Soviet Government stated that it is keenly interested that representatives of all nations should know the internal situation of Russia, and would therefore admit representatives of the press and a delegation of the English Congress of Trades Unions, who would be given full liberty to study the situation in Russia in all its aspects. The reply further consented in principle to the visit of the delegation of the League of Nations, provided it contained no members "who have been associated with the plots against the Russian Government" or "representatives of nations which have in effect renounced their neutrality in the war on Soviet Russia."

This reply was laid before the Council of the League at its meeting in Rome. The conditions laid down were considered as practically amounting to a refusal of permission to send the commission, and an answer to this effect was directed to be sent, with the statement that the Council of the League "must lay upon the Soviet Government the entire responsibility for frustrating a step prompted solely by the desire to improve international relations and the economic situation of the world."

Disease in Central Europe

At the third meeting of the Council it approved an appeal which had previously been sent by Mr. Balfour to the International League

of Red Cross Societies to organize an effort to deal with the ravages inflicted by disease upon the underfed populations of Central Europe. A favorable response to the appeal, conditioned upon the assurance that food, clothing and transportation would be supplied by the governments, was presented to the Council at its fifth session. A survey made by the Relief Credits Committee in Paris of the available supplies remaining on hand from the supplies furnished by the British and American Governments, the Red Cross and other societies and individuals, showed supplies sufficient to last at least until the next harvest, and the Council therefore requested the League of Red Cross Societies to proceed with the formulation of plans and the issuance of a general appeal for assistance.

Mandate for Armenia

The question of a mandate for Armenia was brought before the Council at its April meeting by an inquiry dated March 12, 1920, from Lord Curzon, acting in his capacity as president of the conference of Foreign Ministers and Ambassadors sitting in London, as to whether the Council of the League would be prepared to accept, on behalf of the League of Nations, the protection of the future independent State of Armenia. A report upon the request was presented by the British representative in the Council, Mr. H. A. L. Fisher, and a memorandum agreed upon containing the following reply:

The Council of the League is, in a word, in full accord with the Supreme Council as to the claims of the Armenian nation. It regards the establishment of an Armenian state upon a safe and independent basis as an obligation of humanity and as an end worthy of effort and sacrifice upon the part of the civilized Powers of the world. Within the limits of its own authority, it is anxious to co-operate to this end. On the other hand, the Council of the League realizes its own limitations. It realizes that it is not a state; that it has as yet no army and no finances, and that its action upon public opinion would be fainter in Asia Minor than in the more civilized regions of Europe. Nor can the Council forget the bitter disillusionment of the Armenian nation over the failure of the Armenian clauses inserted in the treaties of the last century. It cannot overlook the fact that the stipulation of Article 22 does not contemplate the League of Nations itself accepting and exercising a mandate. On the contrary, these stipulations require the League to supervise the execution of mandates entrusted to a specified Power for communities which formerly belonged to the Ottoman Empire. The supervision by the League of Nations of the various mandates entrusted to certain Powers for different regions of the former Ottoman Empire

hardly seems to be compatible with the execution by the League itself of a mandate for one of these regions. Having these considerations in mind, the Council, though it has no desire to give too narrow or pedantic an interpretation to its power, has come to the conclusion that the future of the Armenian nation could best be assured if a member of the League or some other Power could be found willing to accept the mandate for Armenia under the supervision and with the full moral support of the League, under the general conditions laid down under Article 22.

In order to assist the Council in ascertaining whether any member of the League would be prepared to accept such a mandate, it propounded certain inquiries to the Supreme Council regarding financial assistance to Armenia; the means of obtaining possession of and defending Armenian territory; and the provision to be made for giving Armenia free access to the sea, through the Port of Batoum, so as to assure communication between the republic and the proposed mandatory.

Protection of Minorities in Turkey

The question of the protection of minorities in Turkey was also brought before the Council in a telegram from Lord Curzon, dated March 12, asking to be informed whether the League of Nations would consent to guarantee the clauses of the treaty of peace, then in preparation, concerning the protection of minorities in Turkey. A report on the request, submitted by Baron Gaiffier d'Hestroy, the Belgian representative, stated that after considering whether the request falls within the competency of the Council, and whether any legal or other objections to compliance arise,

The Council has unanimously decided that its mission and the expectations of the civilized world require it to accede to this request. It considers that it would be carrying out the great task for which it was constituted by contributing in every possible way to prevent the repetition of the abominable crimes which have so often been committed in the territory of the Ottoman Empire, and thus prevent the recurrence of war, which these massacres may bring about.

No definite action could be taken, however, until the terms of the treaty of peace had been definitely concluded with Turkey.

Repatriation of Prisoners of War

The subject of the repatriation of prisoners of war in Siberia came before the Council in its fourth session, at the suggestion of the Supreme Economic Council sitting in Paris. A report submitted to

the Council by Count Bonin Longare, the Italian representative, stated that "it is clear that the League could not undertake a more humane task, or one more in keeping with Article 25 of the Covenant by the terms of which the members of the League bind themselves to do all in their power to relieve the suffering of the world." The Council, therefore, agreed to entrust to a competent person the duty of investigating what was most necessary and urgent in order to accomplish the repatriation of the prisoners, and to carry out the measures required, subject to the intervention of the Council. The famous Norwegian explorer Nansen was subsequently entrusted with this mission.

Traffic in Women and Children

The first business brought before the Rome meeting was a report upon traffic in women and children, presented by M. Gastao da Cunha, the Brazilian representative. The report reviewed the work of the international conference, which met at Paris in 1902 and drafted an international convention on the subject, the results which were accomplished by the convention, and the work of the International Bureau for the suppression of the White Slave Traffic, aided by various national societies. The report stated that the International Bureau is now making efforts to convene a general conference of the national societies to make further recommendations and M. da Cunha therefore proposed that the Council adopt a resolution authorizing the appointment of an officer to be attached to the Secretariat of the League of Nations, whose special duty it will be to keep in touch with all matters relative to the white slave traffic, but that no steps be taken by the League until the recommendations of the proposed international conference have been submitted.

Plebiscite in Eupen and Malmedy

Charges by Germany that the Belgian authorities were adopting repressive measures to prevent a fair expression of public opinion in the territories of Eupen and Malmedy, in which plebiscites were being held in accordance with the Treaty of Versailles, were laid before the Council at its fifth session, with the request that the League of Nations use its authority to insure that the populations of these districts be given the opportunity freely to record their opinion. The charges were denied by Belgium, which made counter-charges alleging systematic German propaganda in the districts.

A report presented by M. Matsui called attention to the fact that the Treaty of Peace does not give the League any right to intervene previous to the communication by Belgium of the results of the plebiscite, and the Secretary-General of the League of Nations was directed to reply to the German complaint accordingly.

Frontier Between Belgium and Germany.

A further complaint was received from Germany protesting against a decision of the delimitation commission under Article 35 of the Treaty of Peace, to settle the new frontier between Belgium and Germany. M. Matsui reported upon this question at the same time that he reported upon the plebiscite question. He called attention to the fact that the delimitation commission was composed of representatives of Belgium and Germany and the Principal Allied Powers, and that the League of Nations is not mentioned. The report was approved by the Council.

Meeting of the Assembly of the League.

The time and place of the first meeting of the Assembly of the League were considered at the May meeting. From a report upon the subject presented by Mr. Coromilas, the Greek representative, it appeared that the following thirty-seven countries and dominions are now members of the League of Nations:

Argentine Republic	Denmark	Peru
Belgium	France	Poland
Bolivia	Greece	Portugal
Brazil	Guatemala	Roumania
British Empire—	Italy	Salvador
Canada	Japan	Serb-Croat-Slovene State
Australia	Liberia	Siam
South Africa	Netherlands	Spain
New Zealand	Norway	Sweden
India	Panama	Switzerland
Chile	Paraguay	Uruguay
Colombia	Persia	Venezuela
Czecho-Slovakia		

A telegram was sent to President Wilson, who, under Article 5 of the Covenant, was authorized to summon the first meeting of the

Assembly, requesting him to issue a summons for the meeting to be held in some European city between the 1st and 15th of November, 1920.

International Statistics.

Upon the recommendation of Mr. Destrée, the Belgian representative, the Council at its fifth session authorized the formation of a Commission on International Statistics to be composed of two representatives from the International Institute of Statistics and one representative each from the International Labor Office, the International Institute of Agriculture and the International Bureau of Commercial Statistics.

The organization of a "Permanent Advisory Armaments Commission Dealing with Military, Naval and Air Questions," was submitted by M. Léon Bourgeois at the fifth meeting of the Council. The resolutions adopted to enable the Council to carry out its duties under Articles 1-9 of the League of Nations are printed in the Supplement to this JOURNAL, page 363.

Secretariat of the League.

Mr. Balfour submitted at the fifth meeting a report on the staff of the Secretariat. Upon this subject the Council adopted the following resolution:

I. That in accordance with Article 6 of the Covenant by which the secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council, the Council approve the provisional appointments made by the Secretary-General acting under the authority of the Organization Committee of the League of Nations. This approval is given for a period of five years, dating from the day of appointment if made after the coming into force of the treaty, and for the other appointments from the date of the coming into force of the treaty.

II. That the salaries provisionally allotted by the Secretary-General be approved by the Council until the budget has been confirmed by the Assembly.

III. That the continuance of the Secretariat in London, where the present provisional seat is established, be authorized, and that the date of a transfer to the permanent seat be decided by the Council after the Assembly has had the opportunity of discussion.

IV. That no member of the International Secretariat during the term of his or her appointment accept any honor or decoration (except for services rendered prior to such appointment).

Budget of the League.

An interesting report on the budget of the League was presented at the fifth session by M. de Leon, the Spanish representative. In this report the expenses of the League were divided into two main groups, first the direct expenses of the Secretariat, and secondly, the expenses incurred by the subsidiary organizations of the League, such as the International Labor Bureau. The total expenses incurred up to March 31, 1920, were £130,500. An estimate of expenses for April, May and June, 1920, was placed at the sum of £119,500. Under Article 6 of the Covenant the expenses of the Secretariat are borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union. The report stated that this system cannot be applied permanently to the League without giving rise to criticism and difficulties, because some states in the Universal Postal Union are not yet members of the League of Nations, because the area of several countries in the Union has been considerably reduced since the apportionment, and finally, because of the great expense of the League as compared with the small annual cost of the Union. The Secretariat was accordingly directed to send a questionnaire to all members of the League, requesting information which will enable the League to consider a more equitable method of apportionment.

A second part of the report dealt with the monetary unit to be used as the basis of the budget. The various standards that might be adopted, including a currency to be established by the League of Nations for its own use, were considered, and it was provisionally decided that the next budget should be based upon gold francs or their equivalent, and the members of the League were requested to make payments accordingly.

Relations of Technical Organizations with League.

An administrative matter concerning the relations between the technical organizations of the League, on the one hand, and the Council and the Assembly, on the other, was the subject of a resolution by the Council at its fifth meeting. The resolution provided that the interior working of the various technical organizations should be independent, but that their relations with the members of the League should be under control.

Registration and Publication of Treaties.

The final matter passed upon at the fifth session was the registration and publication of treaties as prescribed under Article 18 of the Covenant of the League of Nations. A memorandum upon this subject, which was approved by the Council, is printed in the Supplement hereto, page 366.

GEORGE A. FINCH.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo, (Portugal); *D. O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsauzeiger; *E. G.*, Eidgenossische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; International High Commission; *J. O.*, Journal officiel (France); *The League*, The League (London); *League of nations O. J.*, League of nations, Official Journal; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

October, 1919.

- 9 BELGIUM—FRANCE. Agreement on reparation of war damages, signed at Paris. Text: *Clunet*, 1920, 47: 361.

November 24—December 2 FRANCE—ITALY. Agreement reached regarding jurisdiction of military tribunals. *Clunet*, 1920, 47: 365.

March, 1920.

- 1 FRANCE—GERMANY. Convention relative to port of Kehl signed at Baden-Baden. Ratifications exchanged, April 8, 1920. Text: *J. O.*, July 1, 1920, p. 9266; *Board of Trade J.*, July 29, 1920, p. 129.
- 17 FRANCE—SWITZERLAND. Convention and additional protocol regulating air traffic, signed Dec. 9, 1919, promulgated. Text: *J. O.*, March 21, 1920, p. 4551.

- 25 **LATIN MONETARY UNION.** Additional convention to the convention of 1885, signed by Belgium, France, Greece, Italy and Switzerland at Paris. *J. O.*, June 24, 1920, p. 8918. Promulgated by Italy, June 7, 1920. *G. U.*, June 30, 1920, p. 2060; and by France, July 1, 1920. *J. O.*, July 4, 1920, p. 9414.
- 30 **GERMAN PEACE TREATY, VERSAILLES,** June 28, 1919. Ratification by Greece deposited at Paris. *Clunet*, 1920, 47: 373.

April, 1920.

- 1 **INTERALLIED RHINELAND HIGH COMMISSION.** Ordinances and instructions made public. *Cmd.* 591.
- 23 **BELGIUM—CHILE.** Convention signed in Santiago concerning the exchange of census information regarding the nationals of one of the countries residing in the territory of the other. *Monit.*, June 23, 1920, p. 4663.
- 24 **FRANCE—GREAT BRITAIN.** Agreement signed at San Remo respecting oil interests. *N. Y. Times*, July 24, 1920, p. 7.

May, 1920.

- 1-Aug. 30 **POLAND—SOVIET RUSSIA.** Anti-Bolshevist campaign of the Poles, supported by the Ukrainians, in progress. Poland invaded Russian territory, resulting in advance into Poland of Bolshevist forces. Various notes were exchanged between Lord Curzon and M. Tchitcherin from July 11 to 28, regarding an armistice between Poland and Soviet Russia. Text: *Nation* (*N. Y.*), Aug. 21 and 28, 1920. On July 23, Poland asked for an armistice and received a favorable reply. British and French governments notified Russia of certain limitations to be placed on Soviet demands upon Poland in arranging for an armistice. *N. Y. Times*, July 31, 1920, p. 1. On July 31, armistice negotiations began. *Wash. Post*, Aug. 3-4, 1920. Notes exchanged by British and Soviet governments from Aug. 6 to 8. Text: *Times*, Aug. 9, 1920, p. 10. On Aug. 10, United States sent note to Italy concerning its attitude toward Russia and Poland. Lloyd George announced policy of Allies in Polish crisis. *N. Y. Times*, Aug. 11, 1920, p. 1. On Aug. 13, British trade unionists issued ultimatum to government requesting a

guarantee against military operations against Russia, the withdrawal of Russian blockade and the recognition of Soviet government. *N. Y. Times*, Aug. 14, 1920, p. 1. Note from France informed United States of agreement in views as to Bolshevik rule. *N. Y. Times*, Aug. 15, 1920, p. 1. On Aug. 21, Colby sent note to Poland in reply to message of Aug. 1 from Premier Witos to President Wilson. Text: *Wash. Post*, Sept. 3, 1920, p. 1. On Aug. 24, a British and Italian communiqué to Soviet government demanded reply on attitude toward Poland. *N. Y. Times*, Aug. 25, 1920, p. 1. On Aug. 26, Russia accepted British proposals. Summary of note. Poland replied to Colby note on same day. Official statement of Polish premier issued. *N. Y. Times*, Aug. 27, 1920, p. 1. Texts of American-Polish correspondence of Aug. 28-30 made public. *Wash. Post*, Sept. 3, 1920, p. 1. See also Great Britain-Soviet Russia (June 7-Sept. 1).

- 3-14 POLAND. Correspondence between Lord Cecil and Lord Curzon relative to intervention by League of Nations in Polish offensive made public. *Manchester Guardian*, May 17, 1920; *Nation* (N. Y.), June 26, 1920, p. 862a.
- 16-17 INTERNATIONAL ECONOMIC CONFERENCE. Held at Gratz by representatives of Italy, Austria, Czecho-Slovakia and Jugoslavia. Plans formulated for a treaty relating to railway, postal, telegraph and telephone services, etc. *Commerce Reports*, July 9, 1920.
- 20 COSTA RICA—GERMANY. Law passed by German National Assembly for resumption of peace relations with Costa Rica. *Costa Rica Ga.*, July 3, 1920, p. 672.
- 20-30 PAN AMERICAN AERONAUTIC CONGRESS, THIRD. Held at Atlantic City. *P. A. U.*, Aug., 1920, p. 176.
- 28 FINLAND. Consented to enter League of Nations. *Cur. Hist.*, July, 1920, 12: 572.
- 30 EX-SERVICE MEN'S INTERNATIONAL. Conference of representatives from nine countries held in Geneva to consider plans for abolishing capitalist system and establishing world-wide co-operative form of society. *Foreign Affairs*, June, 1920, p. 4.

June, 1920.

- 1 GERMANY—LATVIA. Conventions concluded regarding independence of Latvia, alien armies, payment of war damages, indemnity commission and exchange of war materials for merchandise. *Temps*, June 3, 1920, p. 4.
- 1 GREAT BRITAIN—NETHERLANDS. Convention signed providing for renewal for five years of arbitration convention of 1905. Promulgated in the Netherlands, June 5. *Staats*, 1920, No. 330.
- 1 PALESTINE. Herbert L. Samuel, on his appointment as High Commissioner of Palestine, announced the purposes of the British mandate. *Cur. Hist.*, July, 1920, 12: 629.
- 2 CHINA—GREAT BRITAIN. China sent message to Great Britain protesting against renewal of the Anglo-Japanese alliance without consulting China. *N. Y. Times*, June 5, 1920, p. 17.
- 3 COLOMBIA—UNITED STATES. Ratification of the treaty of 1914 for the settlement of differences with Colombia arising out of the partitioning of Panama in November, 1903, was recommended by the Committee on Foreign Relations of the United States Senate. *Cur. Hist.*, July, 1920, 12: 593.
- 3-10 INTERALLIED HOUSING AND TOWN PLANNING CONGRESS. Held in London, with representatives of more than twenty countries in attendance. *Cur. Hist.*, Aug., 1920, 12: 775.
- 4 FRANCE. Regulations issued for carrying out decree of Dec. 30, 1919, relative to public property and private interests, and decree of March 11, 1920, relative to the office of verification and compensation in application of Part X (Economic clauses) of the German Peace Treaty. *J. O.*, June 6, 1920, p. 8154.
- 4 HUNGARIAN PEACE TREATY. Signed at Versailles, after protest by Hungarian delegation and demand for modification. *Cur. Hist.*, July, 1920, 12: 615.
- 6 FRANCE—POLAND. Protocol signed at Montellierie to convention relative to emigration and immigration signed at Warsaw, Sept. 3, 1919. *J. O.*, June 27, 1920, p. 9038.
- 6 INTERNATIONAL JURIDICAL UNION. Third session held in Paris. *Paix par le droit*, June-July, 1920, p. 228. The Union resolved to accept, with the University of Paris, the patronage of a school of international law. *Temps*, June 17, 1920, p. 2.

- 7-Sept. 1 GREAT BRITAIN—SOVIET RUSSIA. An agreement was reached on June 7 for resumption of trade between the two countries. *Wash. Post*, June 8, 1920, p. 12. M. Krassin on June 29 addressed a note to Lloyd George, whose reply, dated June 30, contained a questionnaire. Reply of Soviet government on July 8 accepted principles laid down in allied memorandum of July 1 as basis of agreement for resumption of trade relations. Text of notes: *Nation* (N. Y.), Aug. 14, 1920, p. 194. On Aug. 1, Krassin arrived in London to resume negotiations with Allied Economic Council. Answer to questionnaire of June 30 was received by Allies. Text of Allies' questions and Soviet replies: *N. Y. Times*, Aug. 2, 1920, p. 1. Soviet government replied on Aug. 26 to British and Italian communiqué of Aug. 24. *Times*, Aug. 27, 1920, p. 9. Balfour's reply to Soviet note was dated Sept. 1. Text: *Times*, Sept. 3, 1920, p. 9. See also Poland—Soviet Russia (May 1–Aug. 30).
- 8 FRANCE—PORTUGAL. Convention relative to importation of authorized products, signed at Paris. *D. G.*, June 14, 1920, p. 818. Promulgated, June 22, 1920. *D. G.*, June 12, 1920, p. 853.
- 8 INTERNATIONAL COMMISSION OF AGRICULTURE. First meeting since the war, held at the Academy of Agriculture, with delegates from the United States, Belgium, Switzerland, Holland and Denmark. *Temps*, June 8, 1920, p. 4.
- 9 INTERNATIONAL COTTON CONGRESS. Opened in Zurich with representatives from England, France, Belgium, Italy, Denmark, Norway, Sweden, Czecho-Slovakia, Spain, and Switzerland in attendance. *Times*, June 10, 1920, p. 15.
- 10-11 INTERNATIONAL CONFERENCE FOR PROTECTION OF PRIVATE INTERESTS IN RUSSIA. Held in Paris, composed of English, Belgian, Danish, Spanish, Dutch, Italian, Norwegian, Swedish and Swiss delegates. A declaration was adopted and will be presented by the delegates to their respective governments. *Temps*, June 14, 1920, p. 1.
- 10-14 AALAND ISLANDS. An exchange of notes between Finland and Sweden on the Aaland Islands question took place on June 10 and 12. On June 14, Sweden addressed a note to the five great Powers asking an exchange of views. *Temps*, June 15-16, 1920. British representative brought the matter before the League

- of Nations, and the Council decided to refer it to a commission of three international jurists to be named by the President of the League. Sweden and Finland have agreed to abstain from interference, pending decision of the jurists. *Wash. Post*, July 13, 1920, p. 6. Text of correspondence: *League of Nations O. J.*, Aug., 1920, spec. suppl. No. 1.
- 11 GERMANY. An official note, published at Berlin, announced that the German army had been reduced to 200,000 men. *Temps*, June 12, 1920, p. 1.
- 11 GERMANY—LATVIA. Law of May 31 promulgated, putting in force the agreement signed April 20, 1920, for exchange of prisoners of war. *Deutsch. Reichs.*, June 18, 1920, p. 1.
- 11 GERMANY—SOVIET RUSSIA. Law of May 31 promulgated in Germany, putting in force the agreement of April 19, 1920, relative to mutual exchange of prisoners of war and interned civilians. *Deutsch. Reichs.*, June 18, 1920, p. 1.
- 11 PARAGUAY—URUGUAY. Treaty of Feb. 28, 1915, concerning procedure for requisitorial and rogatory letters, etc., approved by law in Uruguay. *D. O.*, (Uruguay), June 22, 1920, p. 687.
- 11 URUGUAY. Convention of July 18, 1918, concerning exchange (?) of college credits and degrees with Peru approved by law. *D. O.* (Uruguay), June 22, 1920, p. 687.
- 12 AZERBAIDJAN—GEORGIA. Peace treaty signed. *Temps*, July 12, 1920, p. 4.
- 12 ESTHONIA—FINLAND. Government of Esthonia recognized by Finland. *Temps*, June 13, 1920, p. 1.
- 12 GEORGIA—SOVIET RUSSIA. Treaty of peace signed, providing for surrender of Batoum to Georgia. *Times*, June 19, 1920, p. 15. City surrendered July 7. *N. Y. Times*, July 11, 1920, p. 15.
- 12 GUATEMALA. Presidential appointments to Permanent Court of Arbitration at The Hague announced. *Guatemalteco*, June 19, 1920, p. 1.
- 13 INTERNATIONAL AIR NAVIGATION CONVENTION. Additional protocol, signed by the Principal Allied and Associated Powers, providing that neutral States may adhere under certain conditions. *Temps*, June 14, 1920, p. 1.
- 14 FINLAND—SOVIET RUSSIA. Peace conference opened at Dorpat. *Times*, June 17, 1920, p. 11. Aug. 13, armistice signed for 31 days. *Times*, Aug. 16, 1920, p. 9.

- 14 FINLAND—UKRAINE. Finland decided to recognize the independence of Ukraine. *Temps*, June 15, 1920, p. 4.
- 14-16 LEAGUE OF NATIONS COUNCIL. Sixth session held in St. James Palace, London. Persia's appeal of May 21 for protection was considered but no action taken, pending fulfillment of Moscow's declared intentions. *Temps*, June 17, 1920, p. 4.
- 15 BELGIUM—FRANCE. Military agreement signed. *N. Y. Times*, Sept. 1, 1920, p. 17. Approved by France, Aug. 30 (Terms summarized); *Times*, Aug. 31, 1920, p. 9; by Belgium, Sept. 13. *N. Y. Times*, Sept. 14, 1920, p. 17.
- 15 CHINESE CONSORTIUM. Plans completed and first organization meeting of representatives of American, British, French, and Japanese groups will be held in New York in September. *N. Y. Times*, June 16, 1920, p. 18.
- 15 DANZIG. The Parliament of the free state met for the first time. *Temps*, June 17, 1920, p. 2.
- 15 DENMARK—GERMANY. Boundaries between Germany and Denmark as fixed by plebiscites, established by the International Schleswig Commission at Flensburg. *Wash. Post*, July 6, 1920, p. 6.
- 16 CHINA—JAPAN. Japanese Foreign Office issued statement embodying correspondence between Japan and China on Shantung question. Text: *N. Y. Times*, June 21, 1920, p. 17.
- 16 HUNGARY. The government decided to take part in the proceedings of the International Commission of the Danube, which will meet in Paris, June 17. *Temps*, June 17, 1920, p. 4.
- 16-July 24 INTERNATIONAL COURT OF JUSTICE. In accordance with Article 14 of the League Covenant, an advisory commission of jurists from ten countries met at The Hague on June 16 to draft plans for an international court. On July 24, the conference closed, and draft of project was sent to League Council, in session at San Sebastian. *Times*, July 26, 1920, p. 15. The Committee adopted three resolutions recommending: (1) A new international conference to carry on the work of the Hague conferences. (2) Establishment of a High Court of International Justice. (3) Opening of the Academy of international law. See Editorial in this JOURNAL. Text of plan: See Supplement to this JOURNAL, p. 371.

- 16 PRISONERS OF WAR. Report on repatriation of prisoners of war, presented by Dr. Nansen and adopted by the League of Nations Council. Text: *New World*, July, 1920, p. 198. On July 9, Dr. Nansen arrived in Moscow to negotiate with the Soviet authorities. *Wash. Post*, July 12, 1920, p. 3.
- 17—July 10 INTERNATIONAL LABOR CONFERENCE. Held in Genoa to consider demands of merchant seamen, the application of the Conventions of Washington to seamen, to frame conventions, etc. *New Europe*, July 22, 1920, p. 38.
- 18—Aug. 10 TURKISH PEACE TREATY. Turkish peace delegates asked further extension of time to present observations on the treaty. *N. Y. Times*, June 19, 1920, p. 15. Additional delay of 15 days granted. *Temps*, June 8, 1920, p. 1. Note from Allied conference at Boulogne on June 26 informed Turkish delegates that no further delay would be granted. *Times*, June 24, 1920, p. 16. Official summary of treaty made public on July 3. Text: *Cur. Hist.*, July, 1920, 12: 716. On July 17, modifications of terms of treaty were handed to delegates, with demand that it be signed within ten days. *Wash. Post*, July 18, 1920, p. 1. On July 21, Turkey announced decision to sign treaty. *N. Y. Times*, July 22, 1920, p. 17. On Aug. 10, the treaty was signed at Sèvres. *Cur. Hist.*, Sept., 1920, 12: 1076.
- 19 AZERBAIDJAN. Addressed memoire to Supreme Council, requesting support in preserving independence and territorial integrity. *Temps*, June 21, 1920, p. 1.
- 19 CANADA—FRANCE. Commercial treaty terminated. *Wash. Post*, June 14, 1920, p. 6.
- 20 HYTHE CONFERENCE. Preliminary Allied conference held to discuss the Turkish treaty situation, German indemnity payments, etc. *N. Y. Times*, June 21, 1920, p. 9.
- 21 INTERNATIONAL CONFERENCE ON REFRIGERATION. Opened in Paris with representatives from 42 countries. Plans agreed upon for an International Institute of Refrigeration. *L'Economiste française*, July 3, 1920, p. 9; *Temps*, June 22, 1920, p. 4.
- 21-22 BOULOGNE CONFERENCE. Meeting of Allied Council held to consider questions of German indemnity, disarmament, Greek mandate, etc. Reply to Germany's request for an army of

- 200,000 men was sent on June 22, insisting upon reduction of German army to 100,000 men by June 10, and upon dissolution of the *Sicherheitswehr*, but consenting to an increase of the police force from 80,000 to 150,000 men. *Times*, June 23, 1920, p. 16-17. Text of three notes sent to Germany on June 22: *Temps*, July 1, 1920, p. 4.
- 23 INTERNATIONAL CHAMBER OF COMMERCE. International Commercial Congress opened in Paris, resulting in organization of an international chamber of commerce. *Adv. of Peace*, Aug., 1920, p. 278.
- 24 GUATEMALA. Government recognized by United States Government. *Cur. Hist.*, Aug., 1920, 12: 819.
- 25 GERMANY. Allied Governments notified German Government that their *chargés d'affaires* at Berlin would be replaced by ambassadors. *Temps*, June 25, 1920, p. 4.
- 25 ITALY—SWITZERLAND. Agreement reached which will facilitate transport of coal from United States to Switzerland by use of Port of Savona. *Times*, May 26, 1920, p. 11.
- 28—July 22 CENTRAL AMERICAN UNION. Identic telegrams sent on June 28 by Government of Salvador to Governments of Honduras, Guatemala, Nicaragua and Costa Rica, proposing a conference to discuss plans for a union of the five countries. *N. Y. Times*, June 29, 1920, p. 17. The Costa Rican and Honduran Governments accepted the invitation. Nicaragua replied expressing approval conditional on discontinuation of Central American peace treaty signed at Washington, 1907. *N. Y. Times*, July 18, 1920, p. 8. Guatemala sent acceptance on July 22. *Wash. Post*, July 24, 1920, p. 4.
- 28 GREAT BRITAIN. Order in Council issued putting in force certain sections of the German Peace Treaty and giving effect to provisions for enforcing them. *Lond. Ga.*, July 2, 1920, p. 7099. Treaty of Peace (Amendment) Order, 1920, issued. *Lond. Ga.*, July 27, 1920, p. 7845.
- 28 PARAGUAY. Manuel Gondra, former Paraguayan Minister to the United States, elected president of Paraguay. *Wash. Post*, June 29, 1920, p. 6.
- 28 SALVADOR. The moratorium which had been in operation in Salvador since the World War began, terminated. *N. Y. Times*, June 30, 1920, p. 17.

- 29 FRANCE—SOVIET RUSSIA. Ministerial decree issued establishing a commission to settle all debts between the old Russian State and France. *J. O.*, July 1, 1920, p. 9269.
- 29 RUMANIA—VATICAN. Announcement from Vatican of renewal of diplomatic relations. *Temps*, June 30, 1920, p. 4.
- 30 FRANCE—GREAT BRITAIN. British Government notified France of termination of convention respecting commercial relations between France and Seychelles Islands signed April 16, 1902. *Lond. Ga.*, July 2, 1920, p. 7120.
- 30 GERMAN PEACE TREATY, VERSAILLES, June 28, 1919. Ratification by Haiti and Liberia deposited at Paris. *Temps*, July 5, 1920, p. 2.
- 30 NORWAY—SOVIET RUSSIA. Norwegian Government notified the Soviet Government that it was ready to resume commercial relations, without, however, officially recognizing the Soviet. *Cur. Hist.*, July, 1920, 12: 611.
- July, 1920.*
- 3-4 BRUSSELS CONFERENCE. Interallied conference held to discuss German disarmament, indemnity, etc., and questions of procedure to be followed at Spa conference. *Temps*, July 3, 1920, p. 4.
- 5 BRITISH INSTITUTE OF INTERNATIONAL AFFAIRS. Inaugurated in London. *New Europe*, July 8, 1920, p. 308. *Times*, July 6, 1920, p. 15.
- 5-16 SPA CONFERENCE. Allied and German Prime Ministers met at Spa on July 5, for direct negotiations concerning German reparation payments, disarmament, war criminals and coal deliveries. The question of disarmament was settled on July 9. On July 16, the German representatives signed the coal protocol and the conference adjourned. *Cur. Hist.*, Aug., 1920, 12: 765. Summary of German memorial on economic conditions; *Times*, July 5, 1920, p. 14. Text of coal protocol: *Wash. Post*, July 17, 1920, p. 1. Agreement approved by Reichstag on July 28. *Cur. Hist.*, Sept., 1920, 12: 1064.
- 5-14 AUSTRIA—SOVIET RUSSIA. Treaty signed for exchange of prisoners, establishment of commissions in each country, and strict neutrality of Austria in the wars against the Soviet. *Wash. Post*, July 20, 1920, p. 5. Ratified by Russia on July 9, and by Austria on July 14. Text: *Contemp. Rev.*, Sept., 1920, p. 425.

- 6 BELGIUM—GERMANY. Referendum at Eupen and Malmedy resulted in 200 registered protests against Belgian occupation out of a total population of 68,000. *N. Y. Times*, July 7, 1920, p. 17.
- 6 LITHUANIA—POLAND. Polish Government recognized the *de facto* independence of Lithuania. *Times*, July 8, 1920, p. 13.
- 6 VENEZUELA. Provisional president approved legislative ratification of adhesion to League of Nations. *Daily Digest*, July 8, 1920.
- 6 SLESVIG. Treaty between Allied Powers and Denmark, returning Danish zone in North Slesvig to Danish sovereignty, signed at Paris. *N. Y. Times*, July 6, 1920, p. 8. Text: *Contemp. Rev.*, Aug., 1920, p. 284. Signed by King Christian of Denmark on July 9. *N. Y. Times*, July 10, 1920, p. 3. Denmark took formal possession of the zone on July 11. *Temps*, July 12, 1920, p. 2.
- 7 LEAGUE OF NATIONS. Appointments made to Permanent Armaments Commission. *Times*, July 7, 1920, p. 13.
- 7-23 INTERNATIONAL ZIONIST CONFERENCE. Held in London to formulate a political program for Palestine. Louis D. Brandeis elected honorary president. Summary of recommendations: *N. Y. Times*, July 20 and 24, 1920. *Cur. Hist.*, Sept., 1920, 12: 1082.
- 7 SOVIET RUSSIA—UNITED STATES. Trade restrictions with Soviet Russia removed by Department of State, except those which pertain to shipment of materials susceptible of immediate use for war purposes. *Wash. Post*, July 8, 1920, p. 1.
- 9-12 LEAGUE OF NATIONS COUNCIL. Special meeting held in London to discuss Aaland question. *Wash. Post*, July 13, 1920, p. 6.
- 11 BAVARIA. Sent telegram to Berlin that disarmament and demobilization either of civil guard or military police would not be permitted. *N. Y. Times*, July 12, 1920, p. 1.
- 11 PRUSSIA—POLAND. Plebiscites to determine boundaries of Poland with East and West Prussia, resulted in an overwhelming German majority. *Temps*, July 13, 1920, p. 4; *New Europe*, Aug. 5, 1920, p. 81.
- 11 WÜRTTEMBERG. Telegram sent to Berlin stating that disarmament and demobilization either of the civil guard or military police would not be permitted. *N. Y. Times*, July 12, 1920, p. 1.

- 12 AUSTRIA—SERBIA. Commercial treaty signed permitting Austria to buy grain in Jugoslavia. *Temps*, July 13, 1920, p. 1.
- 12 GREECE—SERBIA. Agreement concluded authorizing Serbian Government to use the port of Saloniki. *Temps*, July 13, 1920, p. 1.
- 12 GERMANY—SWITZERLAND. New commercial treaty concluded under which Switzerland will get about 40,000 tons of German coal monthly. *Daily Digest*, July 12, 1920.
- 12—Aug. 8 LITHUANIA—SOVIET RUSSIA. Peace Treaty signed at Moscow on July 12. *Temps*, July 15/16, 1920, p. 2. Lithuanian Parliament ratified peace treaty on Aug. 6. *N. Y. Times*, Aug. 8, 1920, p. 1. Agreement signed providing for withdrawal of bolshevik army from Lithuanian territory by Sept. 8. *Press notice*, Aug. 9, 1920.
- 13-17 GREAT BRITAIN—JAPAN. Treaty of alliance extended for one year and League of Nations notified, with statement that they will recognize principle of the covenant if the alliance should be renewed next year. *N. Y. Times*, July 13, 1920, p. 17, July 24, 1920, p. 4.
- 13 JAPAN—UNITED STATES. Informal conversations held between the two governments relative to California legislation to prevent Japanese from owning or leasing land. *N. Y. Times*, July 14, 1920, p. 1.
- 15 JAPAN—VERKHNI-UDINSK GOVERNMENT. Agreement for suspension of hostilities signed, pending completion of negotiations between the Russo-Japanese committees in Siberia. *N. Y. Times*, July 19, 1920, p. 12.
- 15 LEAGUE OF NATIONS ASSEMBLY. Call for meeting of League Assembly in Geneva on Nov. 15, issued by President Wilson. *Times*, July 15, 1920, p. 15.
- 15 THE INTERNATIONALE (THIRD). Opened its second congress in Moscow. *Cur. Hist.*, Sept., 1920, p. 932.
- 16 ALLIED POWERS—SERB-CROAT-SLOVENE STATE. Procès verbal of deposit of ratifications of minorities treaty of Sept. 10, 1919, signed at Paris by representatives of France and Jugoslavia. *Press notice*, July 28, 1920.
- 16 AUSTRIAN PEACE TREATY. Ratifications exchanged at the French Foreign Office. *N. Y. Times*, July 17, 1920, p. 6; *Times*, July

- 17, 1920, p. 11. Promulgated in France. *J. O.*, July 26, 1920, p. 10681. Ratified by Rumania on Aug. 15. *Times*, Aug. 18, 1920, p. 9.
- 16 ALLIED POWERS—CZECHO-SLOVAK REPUBLIC. Procès verbal of deposit of ratifications of minorities treaty of Sept. 10, 1919, signed by representatives of France and Czecho-Slovakia. *Wash. Post*, July 17, 1920, p. 4; *Press notice*, July 28, 1920.
- 16 BOLIVIA. President Guerra deposed and new government formed. *N. Y. Times*, July 17, 1920, p. 3.
- 16 LEBANON. Rejected mandate of France and declared independence. *N. Y. Times*, July 18, 1920, p. 14. Proclamation of the new state was made at Beirut on Sept. 1. *N. Y. Times*, Sept. 5, 1920, p. 13.
- 16-25 SYRIA. On July 16, France sent a 24-hour ultimatum to "King" Feisal demanding acquiescence in French mandate for Syria and adoption of French as official language and French currency for Syria. At expiration of the time the French opened hostilities against Aleppo and Damascus. *N. Y. Times*, July 17, 1920, p. 1. General mobilization ordered in Syria on July 18, as reply to French ultimatum. *Wash. Post*, July 19, 1920, p. 1. Feisal agreed to French ultimatum on July 21. *N. Y. Times*, July 23, 1920, p. 17. On July 25, French troops entered Damascus and a proclamation was issued dethroning Feisal. *Cur. Hist.*, Sept., 1920, 12: 1079.
- 17 BOLIVIA—PERU. Peru recognized new Bolivian Government. *Cur. Hist.*, Sept., 1920, 12: 1093.
- 19 INTERNATIONAL COMMUNIST CONGRESS. Second congress opened at Petrograd with 51 countries represented. *N. Y. Times*, July 22, 1920, p. 6.
- 19 INTERNATIONAL SURGICAL SOCIETY. Opened its fifth congress in Paris. *Wash. Post*, July 20, 1920, p. 6.
- 20 ESTHONIA—GREAT BRITAIN. Arrangement for commercial reciprocity agreed upon by exchange of notes. *Board of Trade J.*, Aug. 19, 1920, p. 221.
- 20-25 GERMANY. Proclamation of neutrality toward Poland and Soviet Russia issued on July 20; on July 25 the export of arms, munitions, etc., to those countries was expressly forbidden. *Deutsch. Reichs.*, July 21 and 28, 1920; *N. Y. Times*, July 23, 1920, p. 17.

- 22 GREAT BRITAIN—AUSTRIA. Order in Council issued, making July 16 official date of termination of war with Austria. *London Ga.*, July 23, 1920, p. 7765.
- 22 GREAT BRITAIN. The Tanganyika Order in Council, 1920, for administration of territory, formerly known as German East Africa, issued. Text: *Lond. Ga.*, July 30, 1920, p. 7951.
- 22 GERMANY. Presidents of the German States, at a meeting in Berlin, decided unanimously to make every effort to execute the agreements made at Spa with the Allies. *N. Y. Times*, July 23, 1920, p. 17.
- 22 JAPAN—RUSSIA (ASIATIC). Negotiations completed regarding creation of a buffer state in Siberia. *Wash. Post*, July 23, 1920, p. 6.
- 24 BELGIUM—FRANCE. Convention concluded for application of paragraph F of Article 296 of the Treaty of Versailles. Text: *Monit.*, Aug. 20, 1920, p. 6095; *J. O.*, Aug. 20, 1920, p. 12238.
- 25 FRANCE—GREAT BRITAIN. Petroleum agreement concluded. Text: *Times*, July 24, 1920, p. 11; *Cmd.* 675.
- 25 GERMANY—GREAT BRITAIN. Notice given to German Government that the following bilateral treaties were revived on June 25: Extradition treaties of May 14, 1872 and Aug. 17, 1911; Parcel post conventions of Nov. 3, 1894 and Nov. 14, 1894; Money order agreements of Jan. 9, 1908 and Feb. 8, 1908, and arrangement between Money Order Department of India and the Post Office Department of the German Empire, signed May 20, 1880 and June 22, 1880. *Lond. Ga.*, July 23, 1920, p. 7769.
- 28 CZECHO-SLOVAK REPUBLIC—POLAND. Plebiscite in Teschen District was abandoned by mutual consent and dispute was settled by the Council of Ambassadors at Paris, who approved territorial adjustments in Teschen and other districts. *N. Y. Times*, July 29, 1920, p. 15; *Cur. Hist.*, Sept., 1920, 12:1069.
- 28 FRANCE—POLAND. Convention signed for transport of mails by air. *Times*, July 29, 1920, p. 11.
- 28—Aug. 14 SAKHALIN. Note sent to Japan by the United States regarding Japan's occupation of Sakhalin. Summary: *N. Y. Times*, Aug. 4, 1920, p. 10. Japan replied on Aug. 14. *N. Y. Times*, Aug. 15, 1920, p. 2.

- 30 GERMANY—NETHERLANDS. Dutch Parliament ratified loan to Germany of 200,000,000 guilders (normally about \$80,000,000). *Wash. Post*, July 31, 1920, p. 1.
- 30 LEAGUE OF NATIONS COUNCIL. Eighth session opened at San Sebastian, at which the Aaland Islands question, European travel, and other matters were discussed, and plans approved for an international court of justice and for an international hygiene bureau. *Cur. Hist.*, Sept., 1920, 12:1096.
- 31 GERMANY. Reichstag passed a bill abolishing compulsory military service. *Cur. Hist.*, Sept., 1920, 12:1064.

August, 1920

- 1 MEXICO. Congressional elections resulted in victory for Liberal Constitutionalist Party, of which General Alvaro Obregon is the head. *Press notice*, Aug. 3, 1920.
- 2 CANADA—WEST INDIES. Trade agreement concluded at Ottawa. *Times*, Aug. 4, 1920, p. 9; *Cmd.* 864.
- 2 COSTA RICA. Government of Costa Rica recognized by the United States on Aug. 2 and by Great Britain on July 31. *Costa Rica Ga.*, Aug. 1 and 4, 1920.
- 2-6 INTERNATIONAL CONGRESS OF MINERS. 25th session held in Geneva. *Temps*, Aug. 3-7, 1920.
- 2 INTERNATIONAL SOCIALIST CONGRESS. Opened in Geneva. *Temps*, Aug. 3, 1920, p. 4.
- 3 DANUBE RIVER. The international conference empowered to deal with the administration of the Danube met in Paris. *Temps*, Aug. 4, 1920, p. 1.
- 4 ALBANIA—ITALY. Treaty signed giving Avlona to Albania and permitting Italy to retain Island of Saseno. *Wash. Post*, Aug. 5, 1920, p. 6; *Times*, Aug. 5, 1920, p. 9.
- 4 AUSTRIA—FRANCE. Convention signed concerning Austrian debts contracted before and during the war. *Temps*, Aug. 5, 1920, p. 1.
- 4 BULGARIA—CZECHO-SLOVAK REPUBLIC. Commercial treaty concluded. *Cur. Hist.*, Oct., 1920, 13:79.
- 4 GREAT BRITAIN—NETHERLANDS. Exchanged ratifications of treaty of extradition concerning the Confederated Malay States, concluded on April 13, 1920. *Staatscourant*, Aug. 16, 1920.

- 4 THE INTERNATIONALE (SECOND). In session at Geneva, passed resolutions as to Germany's responsibility for the war and failure of socialists to resist the national action. *Adv. of peace*, Aug., 1920, p. 285.
- 5 GERMANY—ITALY. Agreement concluded providing delivery of 180,000 tons of coal per month to Italy. *Times*, Aug. 6, 1920, p. 9.
- 8 INTERNATIONAL ESPERANTO CONGRESS. Twelfth congress opened at The Hague. *Times*, Aug. 10, 1920, p. 9.
- 6 BALTIC STATES CONFERENCE. First meeting held with delegates present from Finland, Esthonia, Latvia, Lithuania, Poland, and the Ukraine. *Times*, Aug. 7, 1920, p. 9.
- 9 BULGARIA—GREAT BRITAIN. King George V issued decree that Aug. 9, 1920 shall be treated as the date of the termination of war with Bulgaria. *Lond. Ga.*, Aug. 20, 1920, p. 8597.
- 9 BULGARIAN PEACE TREATY. Ratifications exchanged. *Temps*, Aug. 10, 1920, p. 4. Promulgated in France on Aug. 12. *J. O.*, Aug. 16/17, 1920, p. 12062. Treaty of Peace (Bulgaria) Order issued by British Government on Aug. 13. *Lond. Ga.*, Aug. 20, 1920, p. 8597.
- 9 ETHIOPIA—UNITED STATES. Commercial treaty, signed June 27, 1914, proclaimed by President Wilson. *U. S. Treaty Series*, No. 647.
- 9 INTERNATIONAL SEAMEN'S CONFERENCE. Opened at Brussels, for further consideration of questions not disposed of at the International Labor Conference at Genoa. *Temps*, Aug. 10, 1920, p. 4.
- 10 ARMENIA—ALLIED POWERS. Signed agreement at Sèvres with regard to minorities. *Wash. Post.*, Aug. 12, 1920, p. 6; *Temps*, Aug. 12, 1920, p. 1.
- 10 ARMENIA—SOVIET RUSSIA. Preliminary treaty of peace signed. *Temps*, Aug. 15, 1920, p. 1.
- 10 GREECE—ALLIED POWERS. Signed treaties at Sèvres concerning minorities and Thrace. *Temps*, Aug. 12, 1920, p. 1.
- 10 BALKAN FRONTIERS. Convention signed by Poland, Rumania, Czecho-Slovakia, and the Principal Allied Powers. *Wash. Post*, Aug. 12, 1920, p. 6; *Temps*, Aug. 12, 1920, p. 1.

- 10 CZECHO-SLOVAK REPUBLIC—ITALY—POLAND—RUMANIA. Signed treaty regulating administrative questions in transferred territory. *Wash. Post*, Aug. 12, 1920, p. 6.
- 10 GERMANY. Passed law for fulfillment of the provisions of the Treaty of Peace concerning mixed arbitral tribunals and the execution of foreign decisions. Text: *Deutsch. Reichs.*, Aug. 18, 1920, p. 1.
- 10 GREECE—ITALY. Convention signed at Sèvres giving the Dodecanese to Greece. *Temps*, Aug. 12, 1920, p. 1.
- 11 JAPAN—SOVIET RUSSIA. Provisional agreement concluded regarding ships confiscated by Japan. *Temps*, Aug. 15, 1920, p. 1.
- 12 LATVIA—SOVIET RUSSIA. Treaty signed at Helsingfors. Summary: *Times*, Aug. 18, 1920, p. 9.
- 12-20 INTERNATIONAL CONFERENCE OF THE SOCIETY OF FRIENDS. First world conference held in London. *Times*, Aug. 14, 1920, p. 8. Text of messages: *Nation* (N. Y.), Sept. 18, 1920, p. 335.
- 13 AUSTRIA—GREAT BRITAIN. Treaty of Peace (Austria) Order issued by British Government. *Lond. Ga.*, Aug. 20, 1920, p. 8580.
- 14 ASIA MINOR. Agreement concluded between France, Great Britain and Italy in regard to delimitation of zones of occupation in Asia Minor. *Times*, Aug. 16, 1920, p. 9.
- 14 CENTRAL EUROPEAN TRIPLE ENTENTE. Agreement reached between Governments of Czecho-Slovakia, Serbia and Rumania for an alliance for mutual protection. *Wash. Post*, Aug. 15, 1920, p. 5; *N. Y. Times*, Aug. 24, 1920, p. 8; *Cur. Hist.*, Oct., 1920, 13: 78.
- 15 AUSTRIA—RUMANIA. Commercial treaty concluded providing for mutual acceptance of moneys of the two countries in payment for commodities. A provisional economic convention was also signed. *Times*, Aug. 18, 1920, p. 9.
- 16 GERMANY. German Government sent note to Supreme Council and to British, French, and Italian Governments protesting against the cutting off of East and West Prussia from the Vistula. *N. Y. Times*, Aug. 17, 1920, p. 2; *Temps*, Aug. 17, 1920, p. 4.
- 18 ITALY—SWITZERLAND. Royal decree issued putting into force the convention of April 25, 1920, relating to fishing in neighboring waters. *G. U.*, Sept. 10, 1920, p. 2838.

- 19 ALBANIA—SERVIA. Albania sent note of complaint to the great powers regarding invasion of Albania by Serbian troops. *Cur. Hist.*, Oct., 1920, 13: 81.
- 19 EGYPT—GREAT BRITAIN. Draft agreement signed in London recognizing independence and sovereign status of Egypt. *Spectator*, Aug. 28, 1920, p. 258.
- 25 INTERNATIONAL FRIENDSHIP THROUGH THE CHURCHES. Fourth conference of the World Alliance was held at St. Beatenberg, Switzerland. *Times*, Aug. 26, 1920, p. 9.
- 26 ALBANIA—ITALY. Albania sent note of protest to Italy regarding invasion of Albania by Serbian troops. *Cur. Hist.*, Oct., 1920, 13: 81.
- 29-31 SCANDINAVIAN MINISTERS CONFERENCE. Held in Copenhagen to discuss matters relating to League of Nations, reduction of armaments, trade relations with Russia, etc. *Times*, Sept. 1, 1920, p. 9.
- 30 FIUME. Gabriele d'Annunzio proclaimed Fiume an independent state to be known as the "Italian Regency of Quarnero," comprising the city of Fiume and several islands in the Adriatic, and published text of constitution of the new state. *Times*, Sept. 1, 1920, p. 9.
- 31 LIBERIA—GREAT BRITAIN. British Government notified Liberia that the agreement of April 10, 1913, concerning the navigation of Manoh River, ceased to have effect on March 23, 1920, but gave assurance that the river would not be closed to navigation by Liberian vessels. *Lond. Ga.*, Sept. 3, 1920, p. 8969.

INTERNATIONAL CONVENTIONS

ADHESIONS AND RATIFICATIONS

COMMERCIAL STATISTICS. Protocol, Brussels, Dec. 31, 1913.

Ratification:

Portugal. May 4, 1920. *D. G.*, May 14, 1920, ser. I, p. 683.

CONVENTIONS: (1) Collisions; (2) Assistance and salvage at sea. Brussels, Sept. 23, 1910.

Adhesion:

Uruguay. June 30, 1920. *Deutsch. Reichs.*, July 28, 1920.

COPYRIGHT CONVENTION. Buenos Aires, Aug. 11, 1910.

Ratification:

Peru. July 23, 1920. *Wash. Post*, July 25, 1920, sec. 2, p. 4.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908; Protocol, Berne, March 20, 1914.

Adhesions:

Norway. March 13, 1920. *E. G.*, March 17, 1920, p. 165.

Poland. Jan. 28, 1920. *Deutsch. Reichs.*, July 29, 1920.

Portugal. Jan. 28, 1920. *J. O.*, April 9, 1920, p. 5622.

Tunis. June 2, 1920. *D. G.*, June 4, 1920, ser. I, p. 757.

Union of South Africa (with reservation). May 1, 1920. *Monit.*, June 20, 1920, p. 4585.

Ratifications:

Germany. Oct. 5, 1919. *J. O.*, Feb. 6, 1920, p. 1934.

Norway. Feb. 28, 1920. *Deutsch. Reichs.*, July 29, 1920, p. 2.

Tunis. April 23, 1920. *Deutsch. Reichs.*, July 29, 1920.

CUSTOMS TARIFFS PUBLICATION. Brussels, July 5, 1890.

Adhesion:

Czecho-Slovak Republic. June 15, 1920. *J. O.*, June 16, 1920, p. 8506.

GENEVA CONVENTION, Aug. 22, 1864. Revisions.

Adhesions:

Finland. Feb. 27, 1920. *E. G.*, March 17, 1920, p. 164.

Poland. July 28, 1920. *Staatscourant*, Aug. 16, 1920; *Monit.*, Aug. 14, 1920, p. 5969; *D. G.*, Aug. 25, 1920.

LETTERS, ETC., OF DECLARED VALUE. Rome, May 26, 1906.

Adhesion:

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830.

MONEY ORDERS. Rome, May 26, 1906.

Adhesions:

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830.

Finland. Feb. 27, 1920. *E. G.*, March 17, 1920, p. 163.

PARCEL POST. Rome, May 26, 1906.

Adhesions:

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830.

Iceland. May 15, 1920. *D. G.*, June 16, 1920, ser. I, p. 829.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Rome, May 26, 1906.**Adhesion:**

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830.

PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.**Adhesions:**

French West Africa. April 29, 1920. *Monit.*, May 29, 1920, p. 4061.

Madagascar. April 29, 1920. *Monit.*, May 29, 1920, p. 4061.

Morocco (French protectorate). April 29, 1920. *Monit.*, May 29, 1920, p. 4061.

Norway. July 17, 1920. *Monit.*, Sept. 4, 1920, p. 6574.

Poland. May 31, 1920. *J. O.*, June 13, 1920, p. 8402.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912.**Adhesions:**

Czecho-Slovak Republic. April 23, 1920. *D. G.*, June 4, 1920, ser. I, p. 757; *Ga. de Madrid*, June 16, 1920, p. 1066.

Ecuador. April 17, 1920. *D. G.*, June 4, 1920, ser. I, p. 757; *Ga. de Madrid*, June 16, 1920, p. 1066.

SAFETY AT SEA. London, Jan. 20, 1914.**Ratification:**

France. July 4, 1920. *J. O.*, July 8, 1920, p. 9582.

"SERVICE DES RECOUVREMENTS." Rome, May 26, 1906.**Adhesion:**

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, June 11, 1908.**Adhesion:**

Finland. Aug. 27, 1920. *D. G.*, Sept. 4, 1920, ser. I, p. 1077.

UNIVERSAL POSTAL CONVENTION. Rome, May 26, 1906.**Adhesion:**

Czecho-Slovak Republic. April 22, 1920. *D. G.*, June 16, 1920, ser. I, p. 830; *E. G.*, June 23, 1920, p. 327.

WHITE SLAVE TRADE. Paris, May 4, 1910.**Adhesion:**

Uruguay. June 11, 1920. *D. O.* (Uruguay), June 22, 1920, p. 687.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN ¹

British communities abroad. Report of Foreign Office committee on. (Misc. No. 8, 1920.) 3d.

Copyright, international. Order in Council regulating copyright regulations as regards Poland. April 26, 1920. (S. R. & O. 1920, No. 822.) 1½d.

Egypt treaty of peace amendment Order in Council, March 25, 1920. (S. R. & O. 1920, No. 650.) 1½d.

Germany. License of the Controller of the British Clearing Office as to communication between creditors and debtors of British and German nationality. June 24, 1920. (S. R. & O. 1920, No. 985.) 1½d.

Hungary, "White Terror" in. Report on alleged existence of. (Misc. No. 9, 1920.) 3d.

International Labor Conference, 1919. Draft conventions and recommendations. *Ministry of Labour*. 4d.

Merchant shipping convention act, 1914. Order in Council postponing coming into operation until Jan. 1, 1921. (S. R. & O. 1920, No. 1272.) 1½d.

Patents of German nationals vested in Custodian. Order of Board of Trade, July 19, 1920. (S. R. & O. 1920, No. 1336.) 2½d.

Peace handbooks prepared under direction of Historical Section of Foreign Office:

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² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing

• Office, Washington, D. C.

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE NOORDAM AND OTHER VESSELS (PART CARGOES EX.)¹

Judicial Committee of the Privy Council

May 4, 1920.

LORD SUMNER, in delivering their lordships' judgment, said: This appeal relates to various bearer securities found in the mails which were carried on the voyages from Holland to the United States by several neutral mail steamers which were stopped and diverted under the Reprisals Order in Council of March 11, 1915. They were all issued by extra-European governments or companies, though in some cases they were parts of the issues appropriated to Germany. The respondents are neutral claimants, to whom Lord Sterndale released these securities. The Procurator-General appeals. He contends that within the meaning of the order they all were "goods" and were either enemy property or of enemy origin, and as such should be either condemned or detained. The respondents accept the Order in Council as valid, but contest its application and construction. In addition to traversing each contention of the Crown, they further allege that in any case the securities are exempt from either capture or detention as being "postal correspondence" within the meaning of the Eleventh Hague Convention, Art. 1. There are some minor matters, in respect of which an appeal is also brought, but as to these their lordships, having examined the facts, think it sufficient to say that they see no reason to differ from the conclusion of the learned president. The questions above mentioned are those which alone require detailed consideration.

No doubt these securities were documents found in the mailbags of the mail steamers, but it cannot be contended that everything found in a mailbag at sea and carried at postal rates or franked by

¹ *Times Law Reports*, Vol. 36, p. 581.

postage stamps is *ipso facto* "postal correspondence" for the purpose of convention. These documents, though printed and engraved matter, are not vehicles of information, and the value of their contents does not lie in what they tell the reader. On the contrary, expressed in common form and earmarked by serial letters and numbers or otherwise, they are identical records of proprietary rights in certain loans and shares or in the interest payable thereon, and, by their terms or by mercantile usage applicable to them, are transferable by delivery. To a *bona fide* buyer the document represents the holder's right to a portion of the loan or the share capital as the case may be. They are commonly dealt in; they are a convenient form in which to transfer wealth from one country to another, and they require no separate assignment nor the execution of any instrument of transfer. If, therefore, any incorporeal rights can be assimilated to goods and merchandise, they must be such rights as these documents represent. If any document can stand outside the description "postal correspondence," it must be such a document as these. The occasion is not opportune for an attempt to define the word "correspondence" as used in the convention, but their lordships are satisfied that none of these securities come within it. Whether in the circumstances of this case the Eleventh Hague Convention has any application at all is a question which accordingly need not be pursued.

At first sight the word "goods" might seem to be an equally inappropriate description. It must, however, be observed that the word is of very general and quite indefinite import, and primarily derives its meaning from the context in which it is used. Their lordships were referred to sundry statutes, in which the word is either defined or stated to include specified things. Of the latter kind the Naval Prize Act, 1864, was particularly relied on, for it brings within the term "goods" "all things subject to adjudication as prize." This does not advance matters. When, as in that act, a word is extended by statute to include a named thing, the conclusion naturally is that in its ordinary sense the bare word would have been insufficient to include it. There is further no reason why the definition clause of the Naval Prize Act, 1864, should be treated as explanatory of the language of an Order in Council which makes no reference to it.

Their lordships are of opinion that the cardinal consideration in interpreting the Order in Council is the character and scope of the

order itself. The content of the word "goods" differs greatly according to the context in which it is found and to the instrument in which it occurs. In a will or in a policy of marine insurance, in the marriage service or in a schedule of railway rates, in the title of a probate action or in an enactment relating to the rights of an execution creditor, the word may sometimes be of the narrowest and sometimes of the widest scope. The question is, what is its content here?

This order was made for the purpose of further restricting the commerce of Germany, and the retaliation, which this order gives effect to, finds its unquestionable justification in the avowed policy of Germany to prevent crews, passengers or goods from being entrusted to British or Allied ships. That policy was intended to be, and was in fact, carried into effect by sinking ships with all that they contained. The "goods," upon which the order operates by way of retaliation for such outrages, are things which instead of being destroyed are to be adjudicated upon, and condemned or detained as the case may be. They are things such as can be loaded on board a ship and discharged from it, placed in the custody of the marshal of the prize court, requisitioned or detained, sold or released. They are such as, having been enemy property, may become neutral property at a definable date. The order contains no definition of the word. Its general object is recited as being "to prevent commodities of any kind from reaching or leaving Germany." How should the word "goods" be construed in such a context?

If securities such as these are not covered by the word "goods," it is plain that the order as a means of carrying out its declared policy contains a large and lamentable *lacuna*; not that this is a reason for supplying its defects by doing violence to its language, but that the language may be legitimately interpreted with reference to the general scope of the order. Of the several things which under the terms of the order can be predicated of the "goods" to which it refers, no one can be said to be inapplicable to these securities. Their lordships are of opinion that the scope of this order is correlative to the enemy policy, which it was intended to defeat. In a British ship these securities were liable to be sunk by enemy action in the name of legitimate warfare; nothing but the clearest defect in the wording of the order should compel the conclusion that they were not so liable, when carried on neutral ships, to be brought before a court of prize to be dealt with after trial in accordance with the terms of the order.

"Goods" are not limited to things which are of considerable bulk or weight, though indeed these securities were anything but imponderable. The documents were not mere symbols of a right or title to be transferred by the operation of other instruments. If lost, they could not be proved and given effect to by secondary evidence. They themselves were things of price, the subjects of sale and delivery, irreplaceable and unalterable. No doubt can be entertained that they are within the descriptive word "goods" as used in the order.

Next, when these securities were seized it is plain that in fact they all belonged to neutrals. The appellant contends that they ought to be deemed to be enemy property because by the law of nations belligerent rights are not to be defeated by changes of ownership, while goods are in transit. If the securities have been in Germany since the date of the order, it is said that enemy ownership ought to be presumed, and that no transfer can be effective from the moment of their despatch from somewhere in Germany until their arrival at an ultimate destination in the United States. In order to apply the old rule of prize law to the present circumstances the argument must assume that transit is not confined to sea transit or to transit in the vessel actually seized, but extends to anterior land transit, even through Germany into Holland, or through Holland to the Dutch port of departure, before the securities reach the mail steamer. It assumes the inversion of the doctrine of continuous voyage by applying this doctrine to transit away from Germany; it assumes its application to a transit in separate and discontinuous stages, and to articles which are not contraband at all; it assumes that the valid and complete transfer of property by delivery of the document at the intermediate stages may be disregarded for the present purposes. Their lordships are not to be understood to accept these assumptions as legitimate, or to express any opinion upon them, nor do they hold that the facts in the present case establish a "continuous transit" from Germany to America, in progress at the time of the seizure in the sense in which that expression is used by the appellant in this part of the argument. They think that it is not necessary to investigate these assumptions on the present occasion. There is, in any case, a broad ground on which the whole of the appellant's argument on this point fails. The Order in Council is a reprisals order—that is to say, His Majesty, in the exercise of his belligerent right, has been pleased upon just and adequate provocation to resort to measures not pre-

scribed by the general existing rules of the law of nations. These measures are of his own selection and are defined in such manner as he thought fit to adopt in the terms of the order. It is just because neutrals are required to submit to an order, validly and justly made by way of reprisal, that they must also be held entitled to know from the terms of the order itself what is the extent and limit of their liability under it. If clear terms are used, their clear meaning must be enforced; if ambiguous terms are used the belligerent cannot ask to have them extended by construction in his own favor. It rested with those who framed the order, within the limits of the Crown's right of reprisal, to select and to state the extent of its exercise. It is the duty of a court of prize, administering the law of nations, to protect the rights of neutrals in this matter by limiting their obligation to that which the order itself states, no less than to enforce the obligations which the order duly creates and clearly declares. In the present case, in order to deter neutrals from assisting the enemy by engaging in his commerce, the order tells them that their goods, if of German origin, are exposed to detention, and, by declaring that condemnation applies to enemy property, it tells them also that, so far as the order is concerned, what belongs to them will not be condemned, though it may be detained. The words are precise. There is nothing said of "enemy character," nothing added to the words "enemy property" to make them applicable to a date antecedent to that of the diversion, nothing to show that the words are to be deemed to include something to which otherwise they would not extend. How can their lordships be asked, under the name of construing the plain and simple language of the order to declare that it condemns neutral property which has been validly acquired from Germans within a certain time and under certain circumstances, and this not by force of the order itself, but by an appeal to general rules whose inadequacy made it necessary to bring the special provisions of the order into existence to meet the enemy's provocation? It is not enough that the second proviso to Article IV contemplates the release of neutral property. This is to be done only on the application of the proper officer of the Crown and is discretionary; nor, in any case, is the argument valid that, if a misconstruction of the language leads to hardship, the hardship can be redressed by the action of the executive. Their lordships are unable to accept the argument of the Procurator-General on this point.

There remains the question of enemy origin. Origin is a quality of the goods, not of the owners or of their intentions or dealings. To decide where a chattel originates may often be difficult; in the case of things of great durability often impossible. Origin sometimes refers to the place where raw material was produced, but *ex hypothesi* the Reprisals Order goes beyond the general rules applicable to the produce of enemy soil, since existing rules were found inadequate. Origin means sometimes the place of manufacture of an artificial commodity, and sometimes it is a thing undiscoverable. It is not inconsistent with the enemy origin of goods, which come from Germany, that they have previously come into being elsewhere than in Germany. After a certain lapse of time, or certain changes of circumstances, origin may be of little more than curious or antiquarian interest. This order could not be concerned, for example, with old German machinery or old German books or old German wine imported into Holland many years ago. For present purposes there is no utility in applying to "goods" ideas appropriate only to human beings, such as the effect of an individual's place of birth or race or nationality upon his subsequent rights or obligations. The best guide is the language and context of the order itself, and the purpose which it was intended to serve. In substance Article III and Article IV of the order are to the same effect, an inwards movement being dealt with in the one and an outwards movement in the other. The words "of enemy origin" in the latter must correspond to "with an enemy destination" in the former; certainly no other words do. Neither expression makes any reference to the completion of some one mercantile or financial adventure or transaction; neither is limited in any way to goods which start from, or are bound to, an enemy port. One of the purposes of the order is to prevent commodities of any kind from leaving Germany; as regards certain commodities, namely, such as are of enemy origin but are not enemy property, the means of prevention is diversion, discharge and detention till the conclusion of peace. To origin in such a connection neither the place where the securities were printed or signed or sealed is really material, nor the country in which the undertakings or the debtors, from whom the securities emanate, chance to carry on their affairs. As to the securities with which this appeal is concerned, in some cases they were bought in Germany for American buyers and received and forwarded to them by their Dutch agents; in some they were bought in Germany

by Dutch dealers for the purpose of prompt resale or of delivery under sales already made in the United States. It is clear as a common characteristic that no long time before they were diverted all had formed part of the common financial stock of Germany's holding in foreign securities. What happened was that as part of the liquidation of this stock, either to support foreign exchange or to establish foreign credits or otherwise, these securities no doubt, along with many others, were separated from that common stock and despatched from a terminus *a quo* in Germany to a terminus *ad quem* overseas. Only in two cases, and those cases of collection of interest coupons, is that terminus elsewhere than in the United States, where doubtless a free market was to be found. There they became merged in the general mass of American-owned securities. In a word, these securities were part of Germany's resources, and the subject-matter of these despatches had its source in Germany. Their origin does not depend on subsequent and intermediate dealings. That the transfer from the place of their origin to their new resting-place was effected by *bona fide* transfers in the ordinary course of financial business and physically by a series of transportations in various vehicles, not necessarily predetermined from the outset, is material to the question of enemy property but not to that of enemy origin. If it were otherwise the whole order could be made nugatory as to all classes of goods if care were taken in each case to sell to a neutral buyer and to deliver in Germany and to leave the buyer to do the rest. Their lordships are of opinion that the meaning of "enemy origin" in the order is abundantly clear and satisfies all that a neutral is entitled to require of the language of a Reprisals Order.

Lord Sumner proceeded to give a list in some detail of the parcels which under Article IV, were of enemy origin, and as such were liable to detention. In regard to one of these he said:—The mere fact that bonds bear a German revenue stamp, apparently because they were at some time issued in Germany, does not seem sufficient to prove origin, where there is no evidence as to the character of the sellers. There are other cases as to which the facts are insufficient, either by way of proof or of presumption, to establish such a connection with Germany as would bring them within the term "enemy origin," but it is not necessary to discuss these cases in detail.

Their lordships, therefore, think that the judgment of Lord Starn-dale, which was otherwise correct, should be varied by setting aside

the decrees for the release of the securities, numbered and described as above, and by substituting the order for their detention, till it be otherwise ordered, which he should have made. It is not necessary to decide what constitutes "the conclusion of peace" mentioned in the first proviso to Article IV, for the objects of the Order in Council have now been satisfied, and there is no further reason why the proper officer of the Crown should not forthwith apply to the prize court for the release of the securities to the respondents. The very limited success of his appeal does not entitle the appellant to any order as to costs, which will, therefore, be borne by the respective parties. Their lordships will humbly advise His Majesty accordingly.

THE DUSSELDORF.¹

Judicial Committee of the Privy Council

July 29, 1920.

LORD SUMNER in delivering their lordships' judgment, said:

In this case the *Dusseldorf*, a German ship, was making her way from Narvik, with a cargo of iron ore, down the Norwegian coast towards the entrance to the Baltic, and so to Emden. Her object was to keep within Norwegian territorial waters, so as to baffle capture by British men-of-war. She was taken by H.M.S. *Tay and Tyne*, at a point off Buholmen and Grisholmen, which was, as it turned out, a little (say 200 yards) within the territorial limits. The learned president, Lord Sterndale, found that the commander of the *Tay and Tyne* had no intention of violating Norwegian neutrality, but that, by an error of judgment, which their lordships consider to have been very pardonable, he conceived that the three-mile line should be drawn a little further to the east than its true position. It is plain that the German ship-owners had a narrow and somewhat lucky escape, and that the sovereignty of Norway suffered the minimum of prejudice from this unintentional violation.

The present claim is made on behalf of His Majesty the King of Norway, by the appellant, Mr. Waldemar Eckell, the Royal Norwegian Consul-General in London. His claim is, firstly, for delivery up of the *Dusseldorf* and her cargo or its proceeds; secondly, for the

¹ *Times Law Reports*, Vol. 36, p. 885.

cost of removing her to Norway; thirdly, for costs and fees payable to the marshal of the prize court or otherwise upon her delivery; and fourthly, the vessel having been regularly requisitioned by his Majesty's Government pending the hearings before the prize court, for an account of profits made by the Crown from the use of the ship, or alternatively, for payment of a reasonable sum for her use.

It may be well to consider in the first instance how this matter stands, apart from authority. In the vessel herself and her cargo, on their own account, the Norwegian Government have neither right, title nor interest, nor had they ever even possession. The German owners have all the right and interest, and, in the absence of any treaty or convention dealing with the case, they can neither come before the court directly as claimants nor can they be allowed to do indirectly what is directly incompetent. Indeed, as against them, the capture is good, being a capture of enemy property; and the "claim of territory," as it is called, is one which is available to the territorial sovereign only, and not to the private ship-owner. These considerations, apart from the validity and effect of orders, regularly made, permitting the Admiralty to requisition the vessel, at once dispose of the fourth claim, namely the claim for profits for freight or hire in respect of the benefit which the British Government obtained from requisitioning the vessel under the prize rules. If the appellant recovered any such sum, it would be held simply in the interest of the enemy owners. No claim has been made, nor has any evidence been given on the footing that the Norwegian Government have come under any pecuniary liability to the owners of the *Dusseldorf*, nor is there any suggestion that the seizure involved them in any outlay or pecuniary disadvantage outside of these proceedings. No one would wish to make light of a violation of territorial sovereignty, but in itself this is a matter arising between sovereigns, and, apart from the peculiar position of captors who are bound to bring their alleged prize before the court it would in itself be non-justiciable, for in effect the prize court would be called on to pronounce a decree, founded on the conduct of his officers, against the sovereign in virtue of whose commission it is authorized to act, and to evaluate imponderable wrongs, which lie outside the category of those with which it is wont to deal.

A court of prize is not, as such, a disciplinary tribunal for officers in his Majesty's Navy, charged with the correction of errors com-

mitted by them while discharging their duties. Any complaint against such officers, which the Government of Norway might have, and any claim for amends for an invasion of the territorial sovereignty of Norway, would fitly be preferred through diplomatic channels to his Majesty's Government for examination and redress.

The facts that the court found itself regularly in possession of the *Dusseldorf*, and subsequently made a regular order giving leave to requisition her, are at once the foundation of the jurisdiction, and the occasion of the Norwegian Government's appearance. It is a fortunate circumstance that the ancient practice, by which the courts of prize entertain litigious claims of this kind made on behalf of neutral Powers, led long ago to the submission of one class of international questions, at any rate, to a judicial determination instead of to the arbitrament of arms, and so provided for a solution of vexed questions at once peaceful, honorable and friendly. It may therefore well be that the rules, which apply to capture on the high seas, are by no means closely applicable to capture in neutral territorial waters. On the high seas, if there is reasonable ground for detention, the risk of it is one which even a neutral must run, and the appropriate remedy is the release of the ship in this country. In neutral waters, on the other hand, no capture should be made at all, and rules applicable to the high seas are not *in pari materia*. Simple release of the ship in this country to the claimant sovereign may be an inadequate redress. The fact that the court has duly received into its charge and jurisdiction a ship which ought not to have been seized at all leads to the conclusion that the true claim of the appellant is for a *restitutio in integrum* so far as the Government of Norway is concerned; but that, naturally as their lordships would incline to a treatment of it as liberal and ungrudging as possible, they are still bound to act judicially and to follow legal principles and the decisions already given in prize cases.

The authorities prior in date to the recent war are few in number and are somewhat indeterminate. In cases between captors and private owners the jurisdiction to award damages and costs against the former on the ground of their misconduct, or to refuse to give them in favor of the latter, where their conduct had been suspicious or irregular, was long ago well recognized, but the language used in stating the grounds of it was not uniform. Sometimes Sir William Scott spoke of such decrees as giving compensation to the suffering

owners, whether the misconduct of the captors was intentional or not; sometimes they were made avowedly as a punishment to deter others, generally privateers, from the repetition of offenses. In *The Ostsee* (9 Moore P. C. 150) the Privy Council laid it down that the former is the better view, though, if so, it is not easy to appreciate the relevancy of inquiring whether the captors acted under a reasonable mistake. From such a jurisdiction little guidance is to be obtained in the present case. Of actual "claims of territory" but few are reported. There are three decisions of Sir William Scott—*The Twee Gebroeders* (3 C. Rob. 162), *The Vrow Anna Catharina* (5 C. Rob. 15), and *The Anna* (5 C. Rob. 373)—and during the present war, in addition to the present case, there have been *The Loekken* (34 *The Times* L. R. 594), *The Valeria* (36 *The Times* L. R. 201; [1920] p. 81), and *The Pellworm* (36 *The Times* L. R. 539). No point has been argued in the present case as to the effect of the provisions of the Treaty of Versailles, such as was discussed in *The Pellworm* (*supra*).

In *The Vrow Anna Catharina* (*supra*), Sir William Scott observes:

The sanctity of a claim of territory is undoubtedly very high When the fact is established it overrules every other consideration. The capture is done away, the property must be restored notwithstanding that it may actually belong to the enemy, and if the captor should appear to have erred wilfully, and not merely through ignorance, he would be subject to further punishment.

In *The Twee Gebroeders* (*supra*), the same great authority condemned the conduct of the captors as having been in violation of a neutral sovereign's rights; but held that, as they had not intended to commit any wrong, and as it was not easy for them to have ascertained where the neutral boundary ran, they ought not to be held liable in damages and costs. On the other hand, in *The Anna* (*supra*), which was the case of a privateer and not of a regular King's ship, there had been deliberate abuse of the territorial waters of the United States, and in a claim of territory restitution of the captured vessel was accompanied with a decree for payment of damages and costs. It does not appear what the measure of these damages was, or whether the Government of the United States had been put to actual expense by the conduct of the privateer.

In the present case there can be no doubt that the appellant was entitled to have the *Dusseldorf* (and the proceeds of the cargo) released to him on behalf of his Majesty the King of Norway. Had the

naval officer's error been brought to the notice of the British Government forthwith, before the *Dusseldorf* was brought before the prize court, her prompt return to Norway on behalf of the Crown, with suitable expressions of regret and regard, would, it can hardly be doubted, have been an ample satisfaction to the King of Norway for the unintentional wrong done. In the event, which has happened, of the ship's being placed in the prize court, the question now is what further relief, if any, should be accorded to the claimant.

The learned president, Lord Sterndale, before whom this question was hardly sufficiently argued, decided, on the authority of *The Twee Gebroeders* (*supra*), that there was no ground for decreeing such costs and damages to the claimant as it has been the practice to grant where the violation of neutrality has been high-handed, negligent or designed. If this were the sole ground on which the matter could be put, there can be no doubt that his decision ought to be affirmed.

It is, however, now on fuller argument contended that, as the right of the Norwegian Government is at least for restoration, this involves either the physical redelivery of the *Dusseldorf* in Norwegian waters, which is not really asked for, or the payment of the costs of her return voyage. The ground is that, if this be not so, the Norwegian Government must either pay this expense, and so suffer pecuniarily for the error of a British officer, or leave the German owners to navigate the vessel for themselves. In any case as between the Norwegian Government and persons whose property at the time of the seizure was within the territorial jurisdiction of the King of Norway and *sub protectione regis*, this would place his government in the invidious position of leaving them without any redress at all for a seizure, which occurred notwithstanding their claim to the protection of the Norwegian Crown. There is a further matter for consideration, which is this. If the hearing had been completed and the release had been decreed, *flagrante bello*, as might have been the case, and if the Norwegian Government, to avoid expense and responsibility for which they would receive no recompense, had forthwith handed the *Dusseldorf* over to her owners before she had reached the security of neutral waters, she might have been captured again. In that case the Government of His Majesty the King of Norway might have been exposed to the observation that their proceedings resulted merely in the vindication of the public sovereignty of the Kingdom of Norway without advantage or redress to the private rights which had

suffered interference while within the limits of that realm. Their lordships think that this argument is well founded, and that, alike from the necessity of performing and paying for the voyage to Norway at their own expense, and from the possibility of being exposed to any such reflection, the Norwegian Government ought to be protected. They are therefore entitled to costs of the voyage to Norway paid and borne by them. The claim for repayment of the marshal's fees and other similar sums rests on a different footing. Here the important points are that the ship came regularly into the custody of the officers of the court, and but for the requisitioning, which also was a regular proceeding, would have remained throughout in its charge, and so would have had the benefit of care and protection, which would enure to enhance the vessel's value or avert depreciation. Even in the hands of the Admiralty, she has necessarily had the benefit of a certain amount of upkeep in the ordinary course of user, and there is no suggestion of ill-usage, neglect or wilful deterioration. Although, as now appears, the captors had no legal right to possession, they were in fact in possession in all good faith, and, in placing the ship and the cargo in the custody of the marshal, they acted in discharge of an obligation of a very binding character, from the observance of which it would be most inexpedient to deter persons in their position in any way. Further, in the matter of costs it is particularly necessary to observe settled rules of practice, for costs are always somewhat artificial matters and dependent on the practice of the court. It has been laid down in *The Franciska* (10 Moore P. C., 73) by their lordship's board that such costs as those now in question are properly charges on the property itself, because it is for the benefit of whom it may concern that the ship and cargo should be placed in the care and custody of the marshal of the court. This decision is, of course, binding upon their lordships, and they therefore think that these charges form a proper charge against the ship and fall to be discharged by those to whom she is delivered up, nor is it necessary or appropriate to inquire under what form or by what process, if any, they may be recovered over from the German owners.

It is possible that some part or the whole of the costs of transferring the *Dusseldorf* to neutral waters has been paid, or contracted to be paid, by her owners, and so has not fallen, or, if they perform their contract, will not ultimately fall, on the Government of Norway. In such a case the appellant will not recover them in these proceedings.

In the result the appeal will be allowed with costs, and the decree of the president will be varied by directing that the appellant is entitled to be paid such expenses of removing the *Dusseldorf* from British waters to Norwegian or other neutral waters as may have fallen, or will ultimately fall, on the Government of Norway, but otherwise the decision of the president will be affirmed. The case will be remitted to the prize court to make the necessary formal decree and to direct a reference to the registrar. Their lordships will humbly advise his Majesty to this effect.

BOOK REVIEWS¹

Some Problems of the Peace Conference. By Charles Homer Haskins and Robert Howard Lord. Cambridge: Harvard University Press, 1920. pp. viii + 310. 6 maps.

The title of this book is well chosen, as the subjects of the chapters indicate. These are: I. Tasks and Methods of the Conference, II. Belgium and Denmark, III. Alsace-Lorraine, and IV. The Rhine and the Saar, these four treated by Mr. Haskins; and V. Poland, VI. Austria, VII. Hungary and the Adriatic, and VIII. the Balkans, treated by Mr. Lord. All these topics present very difficult problems, not only of peace but of justice upon which peace, if it is to be expected, must ultimately rest.

Not the least of these problems was a right decision regarding the tasks and methods of the Conference. Broadly speaking the proper task was the just termination of the war. But, as Mr. Haskins says, "Far beyond the more immediate and necessary tasks of the Conference rose the dreams of those who looked for the dawning of a new age of peace and justice, a new social and economic era. . . . The downtrodden and the oppressed looked toward Paris. . . . Beautiful, extravagant, heart-breaking hopes were centered on the Conference at Paris, most of all on the leader of the American delegation and his program. And such hopes were in large measure inevitably doomed to disappointment."

Although Mr. Haskins and Mr. Lord were participants in arriving at the territorial settlements, in these chapters,—which were delivered as lectures before the Lowell Institute last January, and are now printed with only "incidental revision,"—while clearly setting forth the intrinsic difficulties of the problems, they are not boastful of the results and frankly admit the imperfections of the adjustments made.

Confessedly, the territorial arrangements of the treaties, viewed from the point of view either of peace or justice, cannot be considered final. Many of them might advantageously have been deferred. As Mr. Haskins says, "Germany would have accepted terms

¹ The JOURNAL assumes no responsibility for statements made or views expressed in signed book reviews.—ED.

in January at which she howled in June, while the Allied peoples might thus have avoided the long agony of doubt and postponement which delayed the resumption of normal activities and the rehabilitation of the devastated regions."

It is suggested by Mr. Haskins that agreement upon the necessary preliminaries might not have been possible. We now know, however, that while a quick peace was universally desired and striven for by Europe, it was delayed by American intervention. "At every time," the author says, "the problem of the League of Nations obtruded itself, and the elaboration of the plan for a league facilitated, instead of hindering, the work of the Conference." No doubt, since the League was to carry some of the territorial solutions, it facilitated the dismissal of some of them by enabling the transfer of several difficult matters to the League. This does not prove, however, that an earlier peace might not have been concluded, leaving the territorial adjustments for the most part to more deliberate action. Through failure to do this, the work of the Conference was thus rendered both too long drawn out and too summary, too long for the immediate need of peace and too quick for a final plan and organization of peace. The redistribution of such large areas of Europe by a victorious military group of great Powers gave little chance for the reasoned agreement of the peoples whose territories were in dispute, and the plain demands of justice were swept aside without the deliberate attempt to conciliate the peoples in interest which the principle of self-determination justified them in expecting.

How vaguely the principle of nationality was conceived and applied at Paris is impressively illustrated on almost every page of this book. There is, of course, no possibility of any exact geographic solution of the problem of national frontiers so long as nationality is founded on identity of race, language, or religion. As for national boundaries in the physical sense, they do not correspond with political facts in more than a few instances, and a claim to them would require wholesale migrations. Where then is the basis of national cohesion and limitation to be found? Before we can speak in any sure sense of "self-determination" we must find the essential nucleus of the national self. Mr. Haskins says, "We may begin by eliminating race, for in Europe race is a matter of no importance in drawing national lines;" and yet, in every solution described or suggested in this book

race is the primary basis sought, and statistics are resorted to as a means of determining it. After discussing the phenomena of speech, Mr. Haskins concludes, "Finally, language, even when accurately ascertained, is not a certain test of political affiliation. 'Historic right' would, if its claims were allowed, throw all questions of nationality into confusion."

There remains the effort to solve the problem of political affiliation by consulting the preferences of the people, but here again we find serious obstacles to the best adjustment. "Unequivocal expressions of public opinion are hard to reach, especially in times of stress and in regions that are under dispute. At best a plebiscite may be but a poor indication of real opinion, and the opinion it registers may well be only transitory. . . . It is also possible that in the long run commercial intercourse and economic interest may create ties more lasting than language or national sentiment, and that a given boundary may do more ultimate harm by violating the fundamental economic interests of a region than by violating its momentary political sentiments."

Into the specific problems that are presented in this volume space does not permit us to enter. It is apparent that no one consistent policy was followed in the decisions of the Supreme Council, and that the national interests of the great Powers had a large influence in determining the conclusions reached. It is equally evident that some of these decisions, and probably most of them, will breed a dissatisfaction that will result in war if they are not altered. It is also quite certain that some of these results cannot be changed by common consent through appeal to the League of Nations, where unanimity is necessary to any change. To the thoughtful reader the mere statement of facts, as presented in this volume, furnishes conclusive evidence of the entanglements in which the United States would be involved by a guarantee of the territorial dispositions made at the Paris Conference. This statement implies no reflection upon the knowledge, or skill, or good intentions of the ethnologists and cartographers who proposed these dispositions. They were assigned an impossible task. These adjustments are in some instances not only questionable approximations to justice, they afford no firm foundation for peace. The peoples concerned have not had their proper part in them. When disputes arise regarding them, as they certainly

will, these problems will be found too complicated to be properly understood in the United States. In so far as they may be made the subject of American decision they will confuse and divide public opinion and obstruct official action, if our Government has the folly to assume any part in them.

The peace of the world can never be made secure by drawing lines on a map. The only true nationality lies in the community of devotion to a body of institutions in which the people believe. The hope of the world, therefore, must be based on the possibility of creating political institutions which will make it possible for human beings to live together on terms of just relationship, without regard to race, language or religion. Until these elements are subordinated and nationality can be given an institutional basis, such as it has in Switzerland, for example, there will continue to be trouble over the disputed areas. The real problem of peace is not one of ethnology or cartography, with results imposed by great Powers, but one of ethical development, taking the form of accepted law. The world has waited long for this, and it must wait longer still; but it is the only way.

As a whole, this book may be commended as sincerely and intelligently written. The problems are stated with clearness and the historic expositions are very helpful to a clear understanding. Mr. Haskins' statement on page 68 that "Holland had no objection to the abandonment of Belgium's neutrality, which had been guaranteed to her as well as to Belgium," suggests the question when and by whom had Holland's neutrality been guaranteed? Mr. Lord's opinion that Italy's possession of Avlona, occupied by her in 1914, "is no more unnatural than England's position at Gibraltar or our own at Panama," seems to imply that England holds Gibraltar in the same manner as the United States holds her freely negotiated purchase of a leasehold in Panama. It would be more just to the United States, to history, and to the theory of rightful national possession to omit the reference to Panama, where the United States bought and paid for the privilege of creating a great waterway for the use of the whole world.

A good index and a very full bibliography add to the value of this book.

DAVID JAYNE HILL.

Judicial Settlement of Controversies Between States of the American Union:

Cases Decided in the Supreme Court of the United States. Collected and edited by James Brown Scott. 2 Vols. New York: Oxford University Press (American Branch). 1918. pp. 1775.

An Analysis of the Cases Decided in the Supreme Court of the United States. By James Brown Scott. Oxford: Clarendon Press. 1919. pp. 548.

The Carnegie Endowment for International Peace has recently issued three volumes which have for their purpose to show that in the experience of the Supreme Court of the United States there is presented evidence of the practicability of establishing a forum for the adjudication, by regular processes of law, of controversies between nations of a justiciable character; and that most, if not all, controversies primarily of a political character may, by formal agreements, be rendered justiciable. In two of these volumes there are given, *in extenso*, the official reports of the cases (opinions of the court and abstracts of the briefs of counsel) decided by the court in the exercise of its jurisdiction over suits between the States of the Union. In truth, the collection is broader than this, for, in order to give a constitutional setting to the status and jurisdiction of the court, cases are included dealing with the nature of the American Union and the extent of the federal judicial power. Also the editor has added a considerable number of explanatory footnotes. It is to be regretted, however, that no index is supplied, nor is there even an alphabetical list of cases. The cases are grouped, according to their significance, under the following heads: (1) The United States and Territories composing the American Union; the subtitles being, The States Prior to the Constitution; The Union and the States Under the Constitution, and The United States and Territories of the Union. (2) The Nature and Extent of Judicial Power of the Constitution and its Relation to the Legislative and Executive Power of the United States. The subtitles under this head are: Definition of Judicial Power; Judicial Control over the Constitutionality of Legislative Acts; Distinction between Judicial and Political Power; The Process by which Political become Justiciable Questions; and the Relation between Federal and State Judiciary. (3) The Nature of a Case, Controversy, or

Suit. (4) Law and Equity; Admiralty and Maritime Jurisdiction; International Law. The subtitles are: Federal Jurisdiction over Crime; Definition of Common Law and Equity; Definition of Admiralty and Maritime Jurisdiction; Definition of International Law. (5) Immunity of Nations and of States from Suit. (6) Suits by Individuals Against States. Somewhat more than one-half of the first volume is taken up by the cases upon these preliminary or collateral points. The seventh group of cases, dealing with controversies between the States of the Union, occupies the remainder of the first and all of the second volume.

In the third volume Dr. Scott has furnished an analysis of the cases the texts of the opinions of which are included in the first two volumes.

Of the usefulness of these volumes to international jurists there can be no doubt. It is not unlikely, however, that the two volumes of texts will prove of more value to scholars in foreign countries than they will within the United States, for in this country complete sets of the two hundred and fifty volumes of the reports of the Supreme Court, elaborately annotated and digested, are readily available in every city of any considerable size, and indeed, are to be found in the private libraries of many lawyers, and it is not to be presumed that an American scholar will be content to use other than these complete and annotated sets. But, outside of the United States, collections of the "United States Reports" are very rare indeed, and therefore these volumes will be a boon to foreign scholars and all statesmen interested in the great problem of securing a peaceful settlement, by judicial process, of controversies between nations which their respective chancellaries are not able to compose.

Another great Anglo-Saxon tribunal exercising a jurisdiction comparable, in many respects, to that of the United States Supreme Court, is the Judicial Committee of the Privy Council of Great Britain. When one considers the character of the British Empire, with its constituent bodies politic ranging in status all the way from Crown Colonies and naval stations to great Dominions with such autonomous powers as to be all but sovereign, it is seen that the Judicial Committee, sitting as it does as the final court of appeal for the outlying parts of the Empire, must have been led to declare and develop doctrines of law and modes of judicial procedure that, by analogy, would be applicable to controversies between wholly sovereign states, whether or not united in a formally organized league of nations. Complete

sets of these "Appeal Cases" are scarcely more numerous outside of Great Britain and her Dominions than are the "United States Reports" outside of America. It is to be hoped, therefore, that the Carnegie Endowment, or some other foundation, will be led to select and publish the decisions of the Privy Council (as well as of the other British courts) rendered in those cases in which are applied doctrines of law and rules of procedure applicable to controversies between sovereign or quasi-sovereign bodies politic.

Turning now to an examination of the analysis which Dr. Scott has made of the American cases, and especially to the conclusions which he has drawn, it would appear, in the opinion of the present writer, that he has sought to push too far the argument that the results that have been achieved furnish strong evidence, if not actual proof, that a similar tribunal would function efficiently for the adjudication of justiciable disputes between the nations of the world. In a manner that does not seem warranted by now generally accepted views regarding the juristic nature of the American Federal State, Dr. Scott, at every possible point, emphasizes the confederate, as distinguished from the national, character of the American Union. At best he ascribes to the Union no sovereign status superior to that of its constituent States, and, in many places, he places it upon a plane superior to them,—describing it, as he does, merely as the agent of the States. Thus he praises the dissenting opinion of Mr. Justice Iredell in *Chisholm v. Georgia*, and expresses surprise that the majority justices could have convinced themselves that it was proper to follow the literal wording of the Constitution and entertain a suit brought against one of the States of the Union by a citizen of one of the other States. He views the adoption of the Eleventh Amendment as the declaration of the American people, not simply that henceforth such a suit should not be brought, but that the court has been wrong in holding, prior to the amendment, that it might be prosecuted. And he is of opinion that the Supreme Court in a later case, *Hans v. Louisiana*, confessed that it had erred in the earlier case. Mr. Justice Bradley did, indeed, in *Hans v. Louisiana*, express concurrence in the views of Mr. Justice Iredell in the *Chisholm* case, but, in a still later case, *South Dakota v. North Carolina*, Mr. Justice Brewer, speaking for the court, pointed out that such an expression could not be considered as a judgment of the court for that question was not then before the court. And in *Cohens v. Virginia*, we have the explicit assertion of Chief

Justice Marshall, also *obiter*, that the motive of the Eleventh Amendment "was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation," but that the purpose had been the more material one of removing the apprehension that the States might be sued in the federal courts for payment of the heavy debts which all of them then owed.

The following comment of Dr. Scott upon the Chisholm case sufficiently represents his point of view. He says:

If the opinion of the majority had prevailed, the Supreme Court would not have been the model for an international tribunal, although it might have been the model for a national tribunal. The [Eleventh] Amendment shows that the people of that day regarded their States as more than inferior bodies politic, that they were sovereign and to be considered as sovereign in the reserved powers, and that they were only deprived of the rights which they expressly granted to their agent, the general government, or which followed by necessary implication, or the exercise of which they specifically, or by necessary implication, renounced. If the opinion of the majority had prevailed, the United States would have been a nation with a single sovereignty. There would not have been a separation of sovereign powers, some lodged with the agent to be exercised for the benefit of the United States, and others reserved for the States for their individual benefit, each, as the great Chief Justice Marshall has said, being sovereign within its appropriate sphere and neither so within the sphere of the other.

It is indeed surprising to find, at this date, such a constitutional doctrine and such a political theory as is thus stated. As a matter of political theory, the present writer had supposed that the doctrine of a truly divided sovereignty had been relegated to the limbo of logical as well as of practicable impossibilities. Dr. Scott, is, of course, well aware that whenever the so-called reserved powers of the States have come into conflict with the constitutional powers of the nation, the States have had to yield. By the twenty-fifth section of the Judiciary Act, adopted by Congress at its very first session, it was provided that in cases in which a federal right, privilege or immunity was set up in a case in a State court, and the decision of the highest State court to which the case might be carried was adverse to such claim, a writ of error should lie to the Supreme Court of the United States, thus giving to the United States, through its own tribunal, the final decision as to what these rights, privileges or immunities might be. In *McCulloch v. Maryland*, it is well known, it was held that a

State, in the exercise of its general taxing power, might not interfere with the operation of a federal agency that, at the most, was only a convenience to the general government and for the constitutionality of the establishment of which reliance had to be had upon a very loose construction of the provision of the Constitution giving to the national government the right to exercise powers "necessary and proper" for carrying into effect the powers expressly given. When the States seek to prosecute federal revenue officers for acts claimed by them to be a legitimate exercise of their federal authority, the right exists to remove the case at once into a federal court for determination. State officials have been repeatedly enjoined by federal courts from executing State laws which have been deemed to violate rights secured by the national Constitution. And, in general, with regard to those matters which are subject to so-called "concurrent" control by the States and the United States, it is established doctrine that State laws must yield to national legislation, and that when Congress has shown an intention to cover the whole ground, the States may not legislate at all.

These are but some of the well-established constitutional doctrines of the Supreme Court which show how impossible it is, with show of reason, to maintain that, under the American constitutional system, the real sovereignty is not lodged in the nation but is divided between it and the States; much less to maintain that the United States does not exercise its powers as its own and in its own behalf but only as the agent of the confederated States.

In his solicitude to exhibit the United States Supreme Court as an international tribunal, or, at any rate, as a prototype of such a court, Dr. Scott seems willing to go so far as to assert, as an historical proposition, that the establishment of the Union in place of the old association under the Articles of Confederation was mainly motivated by the desire to obtain a court competent to decide controversies between the States. "The judiciary," he says, "was considered the most important branch of the Government of the Union," and he is not disturbed by the circumstance that during the first years under the new government Colonel Harrison declined appointment upon the federal supreme bench because he preferred the chancellorship of the State of Maryland; that John Rutledge, after serving a few months, resigned as associate justice of the Supreme Court to accept the chief justiceship of South Carolina, and that John Jay resigned the chief justice-

ship itself in order to become a governor of New York. In truth, it is of course well known that not until Marshall had for some years presided over the Supreme Court was it seen how important a constitutional agency that tribunal could be made.

If, now, it be conceded that Dr. Scott has yielded to the temptation to overstate the quasi-international character of the Supreme Court, it none the less remains true that the exercise by that tribunal of its jurisdiction over controversies between the States of the Union tends strongly to argue the feasibility of a true international court for the adjudication of controversies of a justiciable character between the nations of the world; and that in its rules of practice and the doctrines which it has declared are to be found a jurisprudence that must surely be of great persuasive force to an international court of justice, if, and when, established.

Dr. Scott in his analysis is careful, when opportunity offers, to point out the respects in which the rules of practice of the Supreme Court, and the principles of public law declared by it, would be proper for adoption by an international court and which, therefore, it may be expected, would in fact be adopted. Especially is emphasized in this connection the fact that the Supreme Court has always been careful to remember that it is a court of limited jurisdiction and that, whether or not the point is raised by counsel, the question of jurisdiction is one that the court itself must consider and affirmatively decide before it will proceed with a case. "The experience of the court in the performance of its judicial duties . . . shows," says Dr. Scott, "that a court of limited jurisdiction, such as is the Supreme Court of the United States, and such as a court of the Society of Nations must inevitably be, can be trusted to keep within the law of its creation."

In this connection, Dr. Scott says that "every attempt of a citizen of one of the States to sue another State of the Union has been frustrated by the court itself as contrary to the Eleventh Amendment of the Constitution negating that right and privilege." This is perhaps too strong a statement. It is true that no citizen, whether of the defendant or other State, has, since the adoption of the Eleventh Amendment, been permitted to obtain a judgment against a State, but in many cases, at the instance of individuals, suits against the officials of a State have been entertained, and their official actions controlled by mandamus as well as by injunction. Furthermore, there

is the fact that the court has permitted a State to sue and obtain judgment against a State upon a claim, originally possessed by a citizen, but transferred to the plaintiff State. However, the court has allowed a State to sue another State only when it has been the real party of interest. But even this rule it has qualified by allowing a State to sue as *parens patriæ*, that is, where the general interests of its citizens, as for example, their health, is claimed to be prejudiced by the action of the defendant State. With regard to this jurisdictional point, it does not need to be pointed out that international practice sustains a more liberal doctrine than this and supports the right of a State, if it sees fit, to bring its pressure or influence to bear upon another State in order to bring about the satisfaction by it of purely commercial claims held by citizens of the first state. Dr. Scott, is, however, of the opinion that should an international court of justice be established, no state should be subjected to suit by a citizen of another state except with approval of the plaintiff's government. This rule, he points out, would be in harmony with the rule adopted by the Second Hague Peace Conference, which allows an individual to resort to a prize court and to summons a belligerent captor before it, only with the consent of his own government.

Perhaps the most interesting of all the cases analyzed by Dr. Scott is that of *Rhode Island v. Massachusetts* (12 Peters, 657), decided in 1838. This was a boundary dispute, and the defendant State strenuously denied the jurisdiction of the court, not only because of its character as a sovereign state, but because the question at issue was a political one. There is not space here to consider, even in outline, the argument of the court in refutation of both of these points, but it is sufficient to say that the case settled the doctrine that, to use the words of Mr. Justice Baldwin, "the submission by the sovereigns or States, to a court of law or equity, of a controversy between them, without prescribing any rule of decision, gives power to decide, according to the appropriate law of the case; which depends on the subject-matter, the source and nature of the claims of the parties, and the law which governs them. From the time of such submission," Mr. Justice Baldwin goes on to say, "the question ceases to be a political one to be decided by the *sic volo, sic jubeo*, of political power; it comes to the court to be decided by its judgment, legal discretion and solemn consideration of the rules of law appropriate to its nature as a judicial question, depending on the exercise of judicial power; as it is

bound to act by known and settled principles of national or municipal jurisprudence, as the case requires." ¹

Dr. Scott stresses the point that the Supreme Court has developed a procedure whereby justice may be done between the States without resorting to a compulsory process to bring a defendant State to its bar. Upon failure of a State to appear after being notified of an action brought against it, judgment is not granted *pro confesso*, the plaintiff being put to full, though of course *ex parte*, proof. Dr. Scott does not fail to see, however, that the most critical of all questions concerning the powers of an international court, as it has been of the United States Supreme Court, will be its authority to compel obedience upon the part of defendant States to judgments or decrees entered against them. Not until 1846 did the American court find it necessary to enter a final decree in a suit between States, and in that case (*Rhode Island v. Massachusetts*, 4 How. 591), the decree was a negative one, the claim of the plaintiff State being disallowed and the two parties left in possession of the territories which they already possessed. In 1860, in the case of *Kentucky v. Dennison*, Governor of Ohio (24 How. 66), the court held that though the Constitution made it a duty of the defendant, as the chief executive of his State, to surrender to the plaintiff State a fugitive from its justice, fulfillment of this obligation could not be compelled by physical force. The language of the court upon this important point deserves quotation. The court, speaking through Chief Justice Taney, said:

The Act [of Congress of 1793] does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the Government of the United States with this power. Indeed, such a power would place every State under the control and dominion of the General Government, even in the administration of its internal concerns and reserved rights. And we think it clear that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it.

In the case of *South Dakota v. North Carolina* (192 U. S. 286), decided in 1904, this being the case earlier referred to in which it was held that a suit might be brought against a State by another State which had become the owner of a claim originally held by one of

¹ Chief Justice Taney dissented, and Mr. Justice Story took no part in the decision.

its citizens, the Supreme Court entered a judgment against the defendant State. It happened, however, that this judgment could be satisfied by the sale of tangible property that could be seized and sold, and therefore, the question as to the power of the court to compel the defendant State to assess and collect a tax or by other action upon its part, to pay the amount awarded against it, was not put to the test. However, the court was emphatic as to its power to issue execution as an essential part of its power to enter judgment.

In the suit of *Virginia v. West Virginia*, which, in one form or another, was several times before the Supreme Court, a decree was entered against the defendant State, and for a time it appeared that, by the refusal of that State to satisfy it, and by reason of the fact that there was no property of the State that might be seized and sold, at last the court would be compelled to decide what specific action should be ordered by it in order that its decree should be given operative effect. As to this, the court, speaking through its Chief Justice, declared that, if necessary, the payment of the judgment could constitutionally be compelled by the exercise of federal authority, even though such compulsion might operate directly upon the governmental agencies of the State. The question involved and affirmatively answered by the court, was stated to be: "May a judgment rendered against a State as a State be enforced against it as such, including the right, to the extent necessary for so doing, of exerting authority over the governmental powers and agencies possessed by the State?"²

Although the opinion of the court upon this point was a unanimous one, Dr. Scott is of opinion that it was an unfortunate and, indeed, constitutionally an unnecessary one. He criticizes the argumentative force of the historical references in the court's opinion and again states his conception of the Federal Constitution as an instrument of government not imposed from above upon subordinate political communities, but drafted by sovereign, free and independent States, its restrictions being "self-denying ordinances or voluntary renunciations of power which they would otherwise have exercised."

In what has gone before there has been opportunity to touch upon only a few of the interesting points raised by the cases which are discussed. Whether or not one agrees with certain of the personal opin-

² In final result it did not become necessary for this compulsion to be applied, for West Virginia finally paid the judgment, and satisfaction was entered upon the records of the court on March 1, 1920.

ions which Dr. Scott has expressed, one must recognize the fidelity and acumen with which he has analyzed and stated the arguments of court and counsel. No one in America has done more than has Dr. Scott for the advancement of the movement to substitute the orderly processes of law for physical force in the settlement of controversies arising between the member states of the society of nations. By the preparation of these three volumes that have furnished the material for this review, he has placed international jurisprudence in still greater debt to himself.

W. W. WILLOUGHBY.

De Iure Belli ac Pacis Hugonis Grotii. Edited by P. C. Molhuysen. Leyden: A. W. Sijthoff. 1919. pp. xv, 752.

In these postbellum days of heaving internationalism the name of Hugo Grotius compels the same undiminished admiration as of yore. Any new edition of his most famous work, "On the Law of War and Peace," is sure to meet warm welcome. Especially ought this to be true of this latest edition, because it hails from the land of Grotius.

As the editor notes in his preface, there are four editions of the *De Iure*, those of 1625, 1632, 1642, and 1646, done by Grotius himself, and due mention is there made of the corrections of text, changes in type, etc., in the successive editions. But no attempt is made to give a complete list of the various editions of the text, practically no bibliography is cited, nor is the Amsterdam Gronovius edition of 1702, which has a text of almost as clear and large type as this latest Dutch text, mentioned at all.

That the Cambridge University Press, in 1853, printed a beautiful text, with an abridged translation by William Whewell, or that the Carnegie Institution of Washington, in 1913 began its series of "Classics of International Law" (now transferred to the Carnegie Endowment for International Peace), with a photographic reproduction of the 1646 edition, accompanied by a notice of a forthcoming annotated text and complete translation, is left wholly as a matter of conjecture for any non-international consultant of this latest Dutch edition. Perhaps even Grotius himself would resent his compatriot's sedulously nationalistic bias in passing over the international range of his editors. But perhaps this editor takes all that for granted.

So far as the text is concerned, praise must be accorded the editor. In a number of pages read here and there at random with several comparative texts, the reviewer did not find either a mistake or a misprint. The punctuation of the text is much improved over earlier editors, and in only one place that the reviewer came upon, did a radical change in punctuation seem to make possible even a slight difference in rendition. A number of references which Grotius cited from memory, wrongly, have been found and bracketed in the notes after the old text reference.

One is inclined to deplore the lack of international agreement in the matter of abbreviations, both those of ancient and mediæval writers, and there is much to be desired in some future definitive edition of Grotius *De Iure Belli ac Pacis* a list of "Auctores Laudati," which will correct traditional spellings, and amplify the authors' names into something less bare in value than the usual lists which still encumber but do not enhance modern editions of the late mediæval internationalists.

RALPH V. D. MAGOFFIN.

The English-Speaking Brotherhood and the League of Nations. By Sir Charles Walston (Waldstein), M.A. Litt.D. Cambridge: University Press. New York: Columbia University Press. 1919. pp. xxi, 224.

The object of this volume is indicated by its title. It is a plea for more cordial relations between the British Empire and the United States, and an earnest argument in behalf of the League of Nations established by the Treaty of Versailles. The former object is entitled to the heartiest sympathy. Relations of friendship and cordiality between the two great English-speaking nations are of the greatest importance to the very existence of civilization, now threatened from so many quarters.

The author's views on the League of Nations go beyond the settlement of Versailles and beyond any propositions ever seriously advocated in the United States. He does not shrink from the logical answer to the current objection that the League is powerless to do anything more than to make recommendations. He advocates disarmament of national forces which might take part in international

war. He urges the establishment of a supernational police, consisting of army, navy and air forces. These forces would be directly under the orders of the Supreme International Court for the purpose of carrying out its orders in the establishment of international justice. He reminds us that a soldier is by the very etymology of the term one who serves for hire. In this view the Hessian troops employed to suppress our own Revolution would seem to be the ideal warriors. The judges of this court as regards their international office and functions would have dropped their nationality and all personal and local interests with which they have been associated. To remove such a tribunal from the influence of separate nations, its seat would be established on some remote islands, the Azores, Bermuda, Madeira, or the Canaries, or perhaps on one or more of the Channel Isles. The author compares such a detached habitation for his Supernational Court with the District of Columbia in its relation to the United States Government. Here, not only is the Supernational Court to have its habitation, but here also would be assembled, to carry into effect its decrees, the International Army, Navy and Air force. The functions of this capital of the great Confederation would not only concern war, but peace as well. It would tend to become the center of the intellectual life of the world. Industry, science and art would there find their center. It would be the seat for great international exhibitions and scientific congresses. Thus will the world's peace be insured. The financing of this great plan is left conveniently vague.

Before this review meets the eyes of our readers the American people will have given a mandate on the questions now under such earnest discussion. It may be doubted whether that mandate, whichever way it may be given, will be as clear and distinct as is often assumed. The details will still remain to be worked out, and in this matter details are everything.

There is no question among those who are discussing the peace settlement that some association of nations with the object of preventing war is desirable. Unquestionably, too, any proposition to carry the League of Nations to the point demanded by our author would stand no chance of consideration by the American Congress or people. Whether if adopted it would work is hardly necessary to discuss; for it is not within the range of possibility.

The author even admits that before his complete ideal is attained it is probable that there will be another conflict, the next and last

war, which will coerce the secessionists of the world into the acceptance of the complete and truly lasting Federation of the Civilized World.

The dream of Germany was one of conflict—the last war, short, sharp and decisive—which should establish forever the German ideal of a systematized and completely governed world. The principal difference in our author's plan is that the rulers of the world would speak English instead of German.

The chapter entitled "Nationality and Hyphenism" is a plea for a genuine feeling of nationality without regard to the origin of citizens. We in America are in a position to realize the danger of organizing citizens according to the nationality of origin of themselves or of their ancestors. His views against such organization are timely and right. At the same time, no account is taken of the serious perils involved in mingling the members of the primary races of mankind. Mr. Lothrop Stoddard, in his *Rising Tide of Color*, has recently brought out this menace with tragic emphasis.

At the present time the danger to the peace of the world lies not so much in national ambitions as in the difficulty—created by the profound economic disturbances of the world—in maintaining the physical basis of life. Millions of the people of central and eastern Europe will be faced during the coming winter with danger of actual starvation. Such conditions make for chaos and anarchy. Such propositions as those of the author offer no remedy.

The whole scheme of the book is hopelessly impracticable. We may heartily agree, however, with this proposition: "All principles of social and political betterment to secure the peace of the world and the progress of civilization which we can devise on political or on economic grounds, will not secure our great purpose unless we can change and mend the heart of man. Only then can peace be assured." It is in establishing just economic conditions and in making this transformation in the heart of the individual—and only the gospel of Christ will do the latter—that much more confidence can be placed than in ambitious schemes of courts composed of judges divested of nationality carrying out their decrees by irresistible force.

GEORGE A. KING.

The Monroe Doctrine and the Great War. By Arnold Bennett Hall.
Chicago: A. G. McClurg & Co. 1920. pp. 177 (no index). 75c.

In purpose and plan of treatment, this small analytic volume is similar to the recent volume of Dr. J. H. Latané on "From Isolation to Leadership" which appeared in 1918. The chief aim is to show that the basic principle of the American historic policy is essentially akin to the policy of the proposed League of Nations. He has presented briefly and in simple form the essential facts of the foundation (Ch. I), formulation (Ch. II), and evolution of the Monroe Doctrine and the main relations of the doctrine to present international problems of peace and world policy. Following the two chapters (III and IV) tracing the evolution of the doctrine, are a chapter on "The Pacific and the Far East" (Ch. V) and another on "Dollar Diplomacy and the Caribbean" (Ch. VI). Three concluding chapters (VII, VIII, and IX)—treating successively the enforcement of the doctrine, its relation to the problems of the World War and the proposed League of Nations, and its future—are most important in presenting the chief aim of the author.

Dr. Hall recommends the example of Monroe's constructive statesmanship in reformulating the expression of established foreign policies (of self-defense) to meet new specific needs, and he concludes that the underlying principle of the "evolving policy of the Monroe doctrine," whatever name may be applied to it, will continue a vital force in grappling with perils that bar the path of national progress. Recognizing recent changes in European conditions, and especially the recent growth of economic imperialism which may induce the United States to enter into imperialistic rivalries as one of the aggressive competitors for the world's markets, he declares that future adherence to the doctrine (under the new conditions of stress and strain) will necessitate extensive preparation for the enforcement of American national policy against some possible and logical European alliance or concert of Powers which he thinks may be formed if America should refuse to become a member of the League of Nations. Doubting whether the American policy can be successfully enforced hereafter by the four previously suggested methods—by moral and diplomatic force, or by legal and judicial remedies of international law and arbitration, or by military power of the United States, or by a defensive Pan-American (or partially Pan-American) policy—

he presents as the best hope of security the League of Nations idea which was adopted by the Paris Conference.

This League, or disentangling association of nations, he regards as the logical conclusion of the recent war, in which America fought to end war and through which she at last realized the disappearance of her isolation and recognized larger international obligations which she cannot consistently avoid; and he believes it can be arranged through peaceful adjustment to secure to each nation a fair share of commercial opportunity and to the American republic adequate protection against improper intervention. After considering the arguments of opponents to the League, he concludes that the League seems the only means available for America to avoid another scourge of war, and that the details of this new effort at self-defense may be arranged to avoid conflict with America's established doctrine of self-defense and to voice the aspirations of American democracy.

Professor Hall's brief, timely volume, avoiding tiresome details but summarizing a large mass of facts, is readable and interesting and should prove useful in stimulating busy Americans to obtain a broader view of American foreign policy.

J. M. CALLAHAN.

Diplomacia Universitaria Americana. Argentina en el Brasil. Ciclo de Conferencias. Derecho Internacional. Política Internacional. Historia Diplomática. By José León Suárez, Academician and Professor in the University of Buenos Ayres. Buenos Ayres: Imprenta Escoffier, Caracciolo y Cia. 1919.

In this volume, containing no less than six hundred solid pages of reading matter, Professor Suárez, of Argentina, has presented to the Spanish-reading public a series of lectures, delivered by himself, on different occasions in 1918, at the law schools and bar and historical associations, and some other centers of learning of Rio Janeiro, Bello Horizonte and São Paulo, Brazil, as well as in the University of Montevideo. The lectures are on different topics of more or less interest to the average student of international relations, especially as viewed from the point of view of Argentina.

In the first of these lectures, which was delivered before the Faculty of Legal and Social Sciences of Rio Janeiro, on the Argentino-Bra-

zilian sisterhood, Professor Suárez takes occasion to comment on the real sentiments of the Argentine Government and people in respect to the late World War, as being quite favorable to the cause of the Allies. Then he enters into an expression of his own opinions on the matter as well as on the future international organization, holding that while

Sovereignty will continue to be the fundamental law of the state, its absolute character will have to be modified in view of the more absolute nature of the Society of Nations. Just as individualism has been subordinated, sometimes in an exaggerated manner, to the social rights, sovereignty, which is the individualism of states, must be harmonized with the rights of the international community at large.

It would be quite interesting to follow Professor Suárez along the various topics selected by him in his very interesting lectures. There is, for instance, a lecture on the *uti possidetis* and the boundary disputes of Latin America which well deserves an extensive commentary. In this lecture Professor Suárez expresses quite an exceptional opinion among Spanish-American writers, and says that the *uti possidetis juris*, of 1810, has been the source and origin of great confusion and embarrassment in boundary disputes among the Latin-American republics. "There is no principle," says Professor Suárez, "which has made the American governments spend more energy and money than this so-called *American principle*; none has rendered fewer practical results, and none has been so productive of ill-feeling, discord and wars as this *uti possidetis juris*, of 1810."

As is well known, the *uti possidetis juris*, of 1810, sprang from the necessity of adopting some rule to fix the boundaries between the Spanish-American republics, which should conform to the peculiar circumstances attending the coming into existence of the new American states. In fact there were no real boundaries. In law there were the political divisions established by the mother country in matters relative to the administration of her American colonies. It was these political divisions which the governments of the new states thought appropriate to adopt as a basis upon which to establish their respective territorial jurisdictions; and in search of a starting-point to determine their respective international boundaries they fell upon and adopted as a desirable rule the *theoretical possession* of Spain in 1810, which was the year when their emancipation began. Aside from the geo-

graphical, grammatical and historical obstacles which are often encountered in the application of this principle, it cannot be denied that, in some cases, the *uti possidetis juris*, of 1810, is in open conflict with the actual and historical possession of the territory in dispute by the respective contending governments, and in those cases the rationale of the principle may be perhaps questionable. But so far as the application of this principle has reference to boundary disputes among the Spanish-American states, its propriety cannot perhaps be successfully controverted. The real trouble, however, arises when it is sought to apply the principle in a controversy where one of the parties is not a Spanish-American state.

Following the lecture on the *uti possidetis* there is a lecture on the Monroe Doctrine, giving something of its history and its first applications in the Argentine, followed by various appendixes which are really interesting. In this lecture Professor Suárez discusses quite extensively the participation of Canning in the formulation of the principles of the Monroe Doctrine as a positive historical fact. As to its early application in the Argentine, Professor Suárez's discussion is deserving of more than a passing notice, and may be well recommended to those interested in this aspect of the Doctrine.

Then there is a lecture on territorial waters and the industries of the sea, followed by seven lectures on General Mitre and South American diplomatic relations. A lecture on diplomacy as a career constitutes a valuable monograph on this interesting subject, especially in this country where diplomacy cannot as yet be considered as a regular career. Several contributions on economic and commercial subjects complete the volume.

The work is a monument to Professor Suárez's ability as a historian, and shows him to be a careful student of international law and relations, especially as developed in the American Continent.

The book contains an index of names, a table of contents and a list of typographical errors; but, as with most Spanish-American books, it cannot boast of a good analytical index.

PEDRO CAPÓ-RODRÍGUEZ.

Bolivia ante la Liga de las Naciones. By Brissot. La Paz: Gonzales y Medina. 1919. pp. 246.

In this volume the author has reviewed the history of the possession of and successive governments controlling a disputed area on the South Pacific, contested by Peru, Bolivia, and Chile, describing also the various treaties relative to its disposition, and discussing at length the causes of the war between these nations which took place in 1879. He regards the dispute as still properly an open one, and the purpose of the volume—to lay the foundation of an appeal to the League of Nations—is concretely expressed by him in the following words:

By virtue of Article 24 of the Rules of the League of Nations, and in accordance with the doctrine that no nation can exist without communication with the sea, Bolivia asks that there may be restored to it the Province of Antofagasta, upon the Pacific, which belonged to its national patrimony from the time of its discovery.

The author conceives that this demand will have the sympathies of the world and the unconditional support of Peru, and be based upon the firm foundation of justice.

Accepting his statements, the results of apparently very considerable labor, it is difficult to withhold sympathy for Bolivia because of the treatment accorded her at the hands of Chile.

JACKSON H. RALSTON.

The Immunity of Private Property from Capture at Sea. By Harold Scott Quigley. (Bulletin of the University of Wisconsin, No. 918, Economics and Political Science Series, Vol. 9, No. 2.) Madison: 1918. pp. 200. 25c.

There is no adequate treatment of the problem of the freedom of the seas available to the student of international law and relations today. Even Sir Francis Piggott's recent work on the subject falls short of the desirable study of the question in principle, confining itself largely as it does to the more technical legal aspects of the case. And Dr. Quigley is concerned here with only one section of the very extensive general subject of maritime freedom and authority, and in treating that limited topic he adheres rather closely to the conventional methods.

The work begins with a review of the history of capture in the practice of European States from the revival of international commerce and international war at the close of the Medieval period to 1854. There follow briefer studies of the Declaration of Paris and subsequent European practice, and of the attitude of the United States toward the right of capture. A rather extended review of the theoretical discussions of the immunity of private property at sea in war is then provided, together with an examination of the reform movements of the last century directed toward that end. After some notice of practice by the Allies and Germany during the years 1914-1915, the author gives his conclusions regarding the past, the present, and, to a certain extent, the future.

The defects of the work are chiefly those inseparable from the subject and not defects of treatment; much labor and talent are expended on a dubious topic. In the first place the author is led by his subject into a laborious review, in Chapter I, of the many international treaties concluded prior to 1854 relating to capture at sea. The object, apparently, is to check up the mutations of national policy and the considerations of abstract theory by reference to "history" (p. 5). But it is hard to see that there is any "history" in evidence, that is, any historic progress. During five centuries belligerent nations have been alternately severe and liberal in their exercise of control over neutral and enemy commerce as seemed most useful to them at the time; "as belligerents these nations reproduced the situation demanded by self-interest" (p. 27). The result is an inconsequential and, on the whole, meaningless series of fluctuations in national laws and practices regarding capture at sea.

It is therefore hard to agree that "the history of the development of the law of maritime capture is a record of progress" (p. 169). That conclusion could have been put forward confidently in 1914 at the end of a century of progress in the "liberalization" of maritime law, marked by the Declaration of Paris, 1856, and the unratified but significant Declaration of London, 1909. But this is not 1914, and the recent war saw the abandonment of the results of the progress of 1814-1914. This Dr. Quigley seems to see clearly (pp. 178, 190), but the tradition of liberal progress to 1914 is allowed to stand, nevertheless.

The reversion to the methods of an earlier day is not so much a confession of the wickedness of nations in the face of a sound ideal,

but, as Dr. Quigley feels (pp. 191, 192), a revelation of the fact that "immunity of private property at sea in time of war" is an unwieldy concept to attempt to incorporate into the law of nations. Under certain circumstances such a rule would be entirely consonant with the general body of principles regarding war, neutrality, and with the actual character of international trade; at other times it would not. Hence the ideal has prospered under Dutch and American auspices in proportion as international commerce has expanded and has remained in private hands, and in proportion as naval power remained rudimentary and war remained a thing of governments and armies. It has suffered under British power when commercial and neutral influence has waned in strength, as national trade has come under public control and as the actual control of the seas has passed to Britain and war become a general economic struggle between whole nations. And whether liberal—or strict—control of commerce at sea by belligerents in time of war is a good thing depends not upon an *a priori* judgment in favor of "liberalism" as such, but upon many other factors. Today immunity, privacy, and neutrality all seem to be in the discard. But the maritime practices of 1914-1918, while certainly more like those of the eighteenth century than like those of the early twentieth, are to be judged wholesome or iniquitous not by reference to the formal immunity of private property at sea.

For immunity has never been an end sought or denied in and by itself. That is the fault most frequently found in the theoretical discussions which are reviewed so carefully in Chapter IV, and it renders these materials as little helpful in an understanding of the realities of the problem as are the treaties studied in Chapter I. These discussions commonly neglect the fact that the degree of authority over commerce at sea which shall be conceded to belligerents must depend, and has always depended, whether this relation has been explicitly recognized or not, upon a conceded right to make war in the first place, a right to remain neutral, in the second, and a right resting in the individual to trade on his own account apart from any authority of his own or foreign governments. To these factors must be added a growing desire, common to the non-mercantile world as well, to restrict the incidence of war as much as possible. Now there is growing into being a disposition to limit the right to make war at all to recognized causes or situations, to limit the right to remain neutral in similar wise, and to increase the control author-

ized to be erected over individuals by their own or foreign governments, especially in activities likely to involve results in the field of international relations. And as this movement replaces the old idea of allowing war to come about freely and then attempting to control its incidence, we are likely to see a severe limitation or complete denial of the private right to trade in wars of a public international authority against an outlaw nation, together with a greater immunity for private property in wars permitted to be waged freely among the nations. In other words, we are likely to see the problem of immunity split up and treated almost wholly as part of the general problem of the organization and maintenance of international law and order.

Dr. Quigley hardly comes in view of this result, primarily, I suppose, because at the time when he was writing (1916) the movement for establishing some international authority of the character described had hardly taken form. His study of the past practice and discussions of the law of capture is thorough, clear, and complete within the selected field. But it is like a study of the law of real property on the eve of the establishment of a communist system; the subject is likely to undergo a revolutionary metamorphosis which will make the Armed Neutrality and the Declaration of Paris "history" indeed.

PITMAN B. POTTER.

INDEX

[*Abbreviations: BN.*, book note; *BR.*, book review. *Ed.*, editorial comment; *JD.*, judicial decision; *LA.*, leading article; *rev.*, reviewer; *Tr.*, translator.]

Aborigines, The question of. A. H. Snow. <i>Cited</i>	616
Academy of international law at The Hague recommended.....	590
Acts of war, Memorandum on principles which should determine, by American representatives on Commission on Responsibilities.....	150
Adams, J. Q. Participation in formulation of Monroe Doctrine.....	14
Adatci, M. Reservations to report of Commission on Responsibilities. <i>Test</i>	151
Aerial navigation, international, and the Peace Conference. A. K. Kuhn. <i>LA.</i>	369
Alabama v. Georgia, 23 How. 505, <i>Cited</i>	68
American Bar Association, Meeting of, 1919. <i>Ed.</i>	214
American Institute of International Law, Recommendations of Habana. J. B. Scott. <i>BR.</i>	301
———. Acte final de la session de la Havane. <i>BR.</i>	304
American Journal of International Law. Changes in. <i>Ed.</i>	382
American Society of International Law. Postponement of annual meeting. <i>Ed.</i>	382
American solidarity. Address of Baltasar Brum. <i>Ed.</i>	598
Anderson, Chandler P. Extension of Congressional jurisdiction by treaty-making power. <i>Ed.</i>	400
———. The international Red Cross organization. <i>Ed.</i>	210
———. United States Congressional peace resolution. <i>Ed.</i>	384
Anna, The, 5 C. Rob. 373. <i>Cited</i>	675
Annette and Dora, The, 35 Times L. R. 288. <i>Cited</i>	511
Argentinian journal of international law. <i>Ed.</i>	608
Arkansas v. Mississippi. <i>JD.</i> 250 U. S. 39.....	260
Arkansas v. Tennessee, 246 U. S. 158. <i>Cited</i>	68
Armed merchant vessels. Chilean decree governing admission to ports, July 7, 1915. <i>Cited</i>	330, 334
Armenia, The mandate over. <i>Ed.</i>	396, 633
Armenian Republic, recognition of, 1920.....	524
Armstrong, S. W. Equality of nations in international law and relation of the doctrine to the Treaty of Versailles. <i>LA.</i>	540
Articles of Confederation. Settlement of controversies between states under R. G. Caldwell. <i>LA.</i>	52
Australia. Naturalization does not confer British citizenship. Markwald v. Attorney-General, 36 Times L. R. 197. <i>JD.</i>	276
———. Settlement of inter-state disputes in.....	48

Austria-Hungary. Responsibility for the World War. Report of Peace Conference Commission. <i>Text</i>	99, 130
———. Self-determination in Central Europe. <i>Ed</i>	235
Authority in the modern state. H. J. Laski. <i>BR</i>	475
Bacon, Robert—In memoriam	403
Beard, American Government and Politics. <i>Cited</i>	579
Belgium. German responsibility for violation of neutrality of. Report of Peace Conference Commission. <i>Text</i>	107, 119, 120
———. Recognition in 1832	521
Belgium-Germany, frontier between. Work of League of Nations.....	636
Bentzon v. Boyle, 9 Cranch 191. <i>Cited</i>	566, 572
Berdahl, C. A. The power of recognition. <i>LA</i>	519
Bieberstein, Baron. Declaration regarding use of submarine mines. <i>Cited</i>	118
Blanco, General, recognition as president of Venezuela. <i>Cited</i>	517
Block, Maurice. On recognition of de facto governments. <i>Cited</i>	499
Blocus Pacifique, Le. H. P. Falcke. <i>BR</i>	298
Bolivia ante la Liga de las Naciones. Brissot. <i>BR</i>	700
Bourgeois, M. Report on permanent court of international justice, 1920. <i>Text</i>	622
Brazil, recognition of, 1889.	523
Bright, John, Eulogy of Abraham Lincoln.....	594
———. Resolution on slavery sent by President Lincoln.....	592
Brissot. Bolivia ante la Liga de las Naciones. <i>BR</i>	700
British Columbia v. Canada, A. C. 1899, C. R. 1906, A. C. 389. <i>Cited</i> ...	46, 47
Brown, Philip Marshall. The mandate over Armenia. <i>Ed</i>	396
———. The Monroe Doctrine and the League of Nations. <i>Ed</i>	207
———. Self-determination in Central Europe. <i>Ed</i>	235
———. "Understandings of international law." <i>Cited</i>	565, 576
Brum, Baltasar. Address on American solidarity. <i>Ed</i>	598
Buenos Ayres, recognition of	521
Bulgaria. Responsibility in the World War. Report of Peace Conference Commission. <i>Text</i>	104
Bullitt, W. C. Memorandum of conversation with Secretary Lansing regarding peace treaty with Germany	163
Burke's concession to the colonists. <i>Cited</i>	593
Caldwell, R. G. Settlement of inter-state disputes. <i>LA</i>	38
Calhoun, J. C. Statement regarding origin of Monroe Doctrine, 1848.....	17
Callahan, J. M., rev. Monroe Doctrine and the Great War. A. B. Hall....	696
Canada, Settlement of provincial disputes in.....	44
Canada v. Ontario, 1910, A. C., 301. <i>Cited</i>	48
Canning. Reply to Spanish Minister on recognition of South American republics	505
Canning-Rush correspondence preceding declaration of Monroe Doctrine....	8
Capó-Rodríguez, P., rev. <i>Diplomacia Universitaria Americana</i> . J. L. Suárez	697

Cass, Secretary. Note to Spain regarding war with Mexico.....	19
Chatham, Lord. Statement regarding British troops in America.....	593
Chile, Neutrality of, during the European War. B. Mathieu, <i>LA</i>	319
———. Recognition of	521
China, Foreign trade of. Chong Su See. <i>BR</i>	286
Chong Su See. Foreign Trade of China. <i>BR</i>	286
Chronicle of international events. Kathryn Sellers and M. A. Matthews... 421, 640	240
Clark, John Bates, <i>rev.</i> Commercial policy in war time and after. W. S. Culbertson	473
Clay, Henry. Declaration of policy concerning Monroe Doctrine, 1825	18
———. Efforts to secure Congressional recognition for Spanish-American colonies	527
Coaling of belligerent vessels in Chilean ports during World War.....	328
Coleman v. Tennessee, 1878, 97 U. S. 509. <i>Cited</i>	219
Colombia, Mr. Trimble's resolution for recognition of, 1822	530
Commercial flag, recognition of	508, 515
Commercial policy in war time and after. W. S. Culbertson. <i>BR</i>	473
Commonwealth v. New South Wales (1906), 3 C. L. R. 807. <i>Cited</i>	50
Congress of United States. Participation in recognition of new states. C. A. Berdahl. <i>LA</i>	525
Congressional jurisdiction, extension of, by treaty-making power. <i>Ed</i>	400
———. Missouri v. Holland <i>JD</i>	459
Constitutional convention of 1787, proceedings in, regarding settlement of inter-state disputes	55
Constitutional law. The settlement of inter-state disputes. R. G. Caldwell, <i>LA</i>	38
Constitutions, rigid and flexible	578
Consuls, effect of appointment of, on recognition	516
Contat, Ant. <i>Tr. Le Blocus pacifique</i> . H. P. Falcke. <i>BR</i>	298
Contraband of war. The Declaration of Paris. C. H. Stockton. <i>LA</i>	356
Costs of return voyage of enemy vessel seized in neutral waters. The Dusseldorf, 36 Times L. R. 885. <i>JD</i>	672
Crimean War. Developments of, which led to Declaration of Paris.....	356
Cuba, attempted Congressional recognition of.....	536
Culbertson, W. S. Commercial policy in war time and after. <i>BR</i>	473
Czecho-Slovakia, recognition of, 1918	523
Dalgarno v. Hannah (1903), 1 C. L. R. 1. <i>Cited</i>	49
Danzig. Work of League of Nations	628
Davis, H. W. Attitude on power of Congress regarding recognition (1864)	534
Dependencies, Administration of. A. H. Snow. <i>Cited</i>	615
Dicey, A. V. The Law of the Constitution. <i>Cited</i>	574
<i>Diplomacia Universitaria Americana</i> . J. L. Suárez. <i>BR</i>	697
Disease in Central Europe. Work of League of Nations.....	632
Dora and Annette, The, 35 Times L. R. 288. <i>Cited</i>	511

Dom Miguel, recognition of	517
Dow v. Johnson, 100 U. S. 158. <i>Cited</i>	221
Dresden, The, German cruiser sunk in Chilean territorial waters	336
Dusseldorf, The, 36 Times L. R. 885. <i>JD</i>	672
Ecuador, recognition of, 1838	522
Enemy character of captured vessel. The Proton, 34 Times L. R. 309. <i>JD</i>	264
———. The Hamborn, 35 Times L. R. 726. <i>JD</i>	269
Enemy origin. The Noordam, 36 Times L. R. 581. <i>JD</i>	665
English-speaking brotherhood and the League of Nations. Sir C. Walston. <i>BR</i>	693
Equality of nations in international law and in Treaty of Versailles. S. W. Armstrong. <i>LA</i>	540
Estonian government. De facto recognition of	510
Eupen and Malmedy, plebiscite in	635
Exchange v. McFadden, 7 Cranch 116. <i>Cited</i>	90
Eysinga, W. J. M. van. <i>Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813. BR</i>	290
Falcke, Horst P. <i>Le Blocus pacifique. BR</i>	298
Financial Conference, International. Work of League of Nations	630
Finch, George A. Jurisdiction of local courts to try enemy persons for war crimes. <i>Ed</i>	218
———. Periodical literature of international law	490
———. Public documents relating to international law	252, 450, 660
———. Treaty of peace with Germany in United States Senate. <i>LA</i> ..	155
———. Work of the League of Nations	620
Finland, recognition of, 1919	524
Flag as determining nationality of captured vessel. The Proton, 34 Times L. R. 309, <i>JD</i> , 264; The Hamborn, 35 Times L. R. 726, <i>JD</i>	269
Florida v. Georgia, 17 How. 504. <i>Cited</i>	64
Force as sanction of international law. R. F. Roxburgh. <i>LA</i>	26
Ford v. Surget, 1878, 97 U. S. 605. <i>Cited</i>	219
Foreign policy, Present problems in. D. J. Hill. <i>BR</i>	464
Foreign service, Report on the. <i>BR</i>	480
Foreign trade of China. Chong Su See. <i>BR</i>	286
Foulke, Roland R. A treatise on international law. <i>BR</i>	469
Fowler v. Miller, 3 Dallas 411. <i>Cited</i>	65
France, recognition of successive governments in	517, 521, 522
Freeland v. Williams, 131 U. S. 405. <i>Cited</i>	222
Fried, Alfred H. <i>Mein Kriegs-Tagebuch. BR</i>	299
Gagara, The. 35 Times L. R. 259. <i>Cited</i>	510
Garner, James W. Punishment of offenders against laws of war. <i>LA</i> ..	70
Georgia v. Tennessee Copper Co., 1907, 206 U. S. 230. <i>Cited</i>	61, 66
German Empire, recognition of, 1871	523
German vessels in Chilean ports during World War, treatment of	334

Germany. Responsibility for World War. Report of Peace Conference Commission. <i>Test</i>	99, 130
———. Treaty of peace with, 1919. Equality of nations in relation to S. W. Armstrong. <i>LA</i>	540
———. Treaty of peace with, in United States Senate. G. A. Finch. <i>LA</i>	155
Germany-United States. Joint resolution declaring the war at an end. <i>Test</i> , 419; <i>ed.</i>	384
Glenart Castle, English hospital ship, punishment for sinking of	81
Gold clearance fund, proposed by Inter-American High Commission	349
"Goods." Securities in mails within meaning of term. The Noordam, 36 Times L. R. 581. <i>JD</i>	665
Greece. <i>La situation internationale de la Grèce (1821-1917)</i> . C. Strupp. <i>BR</i>	486
———. Recognition of, 1837	507, 522
Gregory, Charles Noble. Meeting of American Bar Association, 1919. <i>Ed.</i>	214
———. L. Oppenheim—In memoriam	229
———. <i>Rev.</i> A treatise on international law. R. R. Foulke	469
Grotius, De Iure Belli ac Pacis. <i>Ed.</i> by P. C. Molhuysen. <i>BR</i>	692
Habana recommendations concerning international organization. J. B. Scott. <i>BR</i>	301
———. <i>Acté final de la session de la Havane</i> . <i>BR</i>	304
Hague academy of international law recommended	590
Hague Conference of 1907, equality of states at	540
Hague Convention relative to restrictions on right of capture. Securities in mails not within protection of. The Noordam, 36 Times L. R. 581. <i>JD</i>	665
Hall, A. B. Monroe Doctrine and the Great War, <i>BR</i>	696
Hall, W. E. On equality of states. <i>Cited</i>	543
Hamborn, The, 35 Times L. R. 726. <i>JD</i>	269
Handley's Lessee v. Anthony, 5 Wheaton 374. <i>Cited</i>	68
Haskins and Lord. Some problems of the Peace Conference. <i>BR</i>	679
Hawaii, recognition of, 1826	522
Health Bureau, International. Work of League of Nations	627
Hershey, A. S. Recognition of de facto governments. <i>LA</i>	499
High court of international justice recommended	589
Hill, David J. The Permanent Court of International Justice. <i>Ed.</i>	387
———. Present problems in Foreign Policy. <i>BR</i>	464
———. <i>Rev.</i> Some problems of the Peace Conference. Haskins and Lord. <i>BR</i>	679
Holland. Refusal to surrender ex-German Kaiser	91
Holy Alliance and origin of Monroe Doctrine	5
Hull, William I., <i>rev.</i> <i>Histoire de l'internationalisme</i> . C. L. Lange	483
Hunt, Gaillard, <i>rev.</i> Report on the foreign service	480
Immunity of private property from capture at sea. H. S. Quigley. <i>BR</i> ..	700
———. Negotiations between United States and European Powers regarding Declaration of Paris	362, 364

Indiana v. Kentucky, 136 U. S. 479. <i>Cited</i>	68
Institut Américain de droit international. <i>Acte final de la session de la Havane. BR.</i>	304
Institute of International Law. Organization after World War, <i>ed.</i>	595
———. Declaration of certain members regarding World War.....	597
Inter-American High Commission. J. B. Moore. <i>LA</i>	343
International administration, Experiments in. F. B. Sayre. <i>BR</i>	287
International court of justice, Permanent. D. J. Hill, <i>ed.</i>	387
———. J. B. Scott, <i>ed.</i>	581
———. Report of M. Bourgeois to Council of League of Nations, <i>text</i> ..	622
International law. Equality of nations in. S. W. Armstrong. <i>LA</i>	540
———. Periodical literature of. Kathryn Sellers and G. A. Finch... 313, 490	
———. Public documents relating to. G. A. Finch..... 252, 450, 660	
———. Sanction of. R. F. Roxburgh. <i>LA</i>	26
———. Teaching of. Address of B. Brum. <i>Ed.</i>	599
———. Treatise on. R. R. Foulke. <i>BR</i>	469
———. Understandings of. Q. Wright. <i>LA</i>	565
International law academy at The Hague recommended.....	590
International law conference recommended	589
International law journals, establishment of. <i>Ed.</i>	606
International organization, Recommendations of Habana concerning. J. B. Scott. <i>BR.</i>	301
———. <i>Acte final de la session de la Havane. BR.</i>	304
International régime of ports, waterways and railways. Work of League of Nations	627
International tribunal for trial of war crimes. Report of Peace Conference commission. <i>Text</i>	117, 122, 140
International waterways. P. M. Ogilvie. <i>BR</i>	478
Internationalism. <i>Histoire de l'Internationalisme.</i> C. L. Lange. <i>BR</i>	483
Inter-state disputes, The settlement of. R. G. Caldwell. <i>LA</i>	38
Ion, T. P., <i>rev. La situation internationale de la Grèce.</i> C. Strupp.....	486
Iowa v. Illinois, 147 U. S. 1. <i>Cited</i>	68
Jackson, Andrew. Message regarding recognition of Texas, 1836 <i>Cited</i> ..	532
Japanese reservations to report of Commission on Responsibilities. <i>Text</i> ..	151
Jefferson, Thomas. Letter to M. Genet regarding contraband, 359; reply to Monroe regarding Canning-Rush correspondence	13
Judicative conciliation. A. H. Snow. <i>Cited</i>	617
Judicial settlement of controversies between States of American Union. J. B. Scott. <i>BR</i>	683
Jugo-Slavia, recognition of, 1919	524
Kansas v. Colorado, 185 U. S. 125, 206 U. S. 46. <i>Cited</i> 61, 67, 68	
Kentucky v. Denison, 24 How. 98. <i>Cited</i>	64
King, George A., <i>rev. English-speaking brotherhood and the League of Nations</i>	693

King v. Governor of South Australia (1907), 4 C. L. R. 1497. <i>Cited</i>	50
Kleffens, E. N. van, rev. <i>Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813</i> , W. J. M. van Eysinga.....	290
———. <i>Het prijsrecht tegenover neutralen in den wereldoorlog van 1914 en volgende jaren</i> , J. H. W. Verzijl.....	291
Kohler, Josef. On sanction for international law, 1915. <i>Cited</i>	577
Kongo Free State, recognition of, 1884.....	523
Korea, recognition of, 1868	522
Kuhn, Arthur K. International aerial navigation and the Peace Conference. <i>LA</i>	369
———. <i>Rev. Mein Kriegs-Tagebuch</i> . A. H. Fried.....	299
Lammasch, Heinrich—In memoriam. <i>Ed</i>	609
Lange, Chr. L. <i>Histoire de l'Internationalisme</i> . <i>BR</i>	483
Lansing, Robt. Dissent from report of Commission on Responsibilities. <i>Text</i> , 127; <i>cited</i>	90
———. Memorandum of conversation with W. C. Bullitt regarding peace treaty with Germany	163
Laski, Harold J. Authority in the modern state. <i>BR</i>	475
———. Studies in the problem of sovereignty. <i>BR</i>	283
Latin-American republics. Recognition of. <i>Cited</i>	507
Lawrence, T. J. On equality of states, <i>cited</i> , 546; in memoriam.....	223
League of Nations. Action of American Bar Association upon.....	215
———. Address of B. Brum. <i>Ed</i>	605
———. Commentary on the. <i>Text</i>	407
———. English-speaking brotherhood and the. Sir C. Walston. <i>BR</i> ..	693
———. Equality of nations and the.....	556
———. In the United States Senate. G. A. Finch. <i>LA</i>	155
———. Meeting of Assembly	636
———. Monroe Doctrine and the. P. M. Brown. <i>Ed</i>	207
———. Permanent Court of International Justice. D. J. Hill, <i>ed.</i> , 387; J. B. Scott, <i>ed.</i>	581
———. Present Problems in foreign policy. D. J. Hill. <i>BR</i>	464
———. Provides no new sanction for international law.....	36
———. Secretariat. Appointment and salaries, 637; budget, 638; relations with technical organizations	638
———. A. H. Snow. According to American idea. <i>Cited</i>	618
———. Understandings of international law in Covenant. Q. Wright. <i>LA</i>	566
———. Work of the. Geo. A. Finch.....	520
League of Peace, Holy Alliance known as.....	7
League of Red Cross Societies. <i>Ed</i>	210
Liberia, recognition of, 1862	522
Lincoln, Abraham. London address of Elihu Root on. <i>Ed</i>	590
Little v. Barreme, 2 Cranch 170. <i>Cited</i>	85

London, Declaration of. Determination of character of vessel by flag. The Proton, 34 Times L. R. 309. <i>JD.</i> , 264; The Hamborn, 35 Times L. R. 726. <i>JD.</i>	269
Lord and Haskins. Some problems of the Peace Conference. <i>BR.</i>	679
Lorimer, James, On equality of states. <i>Cited.</i>	547
Louisiana v. Texas, 1899, 176 U. S. 1. <i>Cited.</i>	61
Luxemburg. German responsibility for violation of neutrality of. Report of Peace Conference Commission	107, 112, 119, 120
Madison, James, Reply to President Monroe regarding Canning-Rush cor- respondence	14
Magellan Straits. Chilean decree regarding neutrality during World War. <i>Cited.</i>	326
Magoffin, R. V. D., <i>rev.</i> De Iure Belli ac pacis Hugonis Grotii. P. C. Molhuysen. <i>Ed.</i>	692
Mails, seizure of neutral securities in. The Noordam, 36 Times L. R. 581. <i>JD.</i>	665
Maine, Sir Henry, on the sanction of international law.....	29
Manitoba v. Canada, 8 E. R. 337 (1903). <i>Cited.</i>	47
Marcy, W. L. Offer of adherence of United States to Declaration of Paris..	362
Markwald v. Attorney-General, 36 Times L. R. 197. <i>JD.</i>	276
Maryland v. West Virginia, 217 U. S. 19. <i>Cited.</i>	67, 68
Massachusetts-New Hampshire. Colonial dispute before Privy Council....	39
Massachusetts v. New York. Dispute under Articles of Confederation....	53
Mathieu, Beltran. Neutrality of Chile during European War. <i>LA.</i>	319
Matthews, M. Alice. Chronicle of international events.....	421, 640
<i>Mein Kriegs-Tagebuch.</i> A. H. Fried. <i>BR.</i>	299
Mexican journal of international law. <i>Ed.</i>	607
Mexico. Application of Monroe Doctrine to French intervention in, 19; Congressional resolution refusing recognition of French government in, 534; recognition of, 1823	521
Mexico, The war with. J. H. Smith. <i>BR.</i>	293
Migratory bird treaty. Constitutionality upheld. Missouri v. Holland, <i>JD.</i> , 459. <i>Cited.</i>	400
Miller, David Hunter, <i>rev.</i> International waterways. P. M. Ogilvie.....	478
Mine's Case, 1 Plowd. 336. <i>Cited.</i>	47
Minorities, rights of, under treaty with Poland. <i>Ed.</i>	392
Missouri v. Holland, <i>JD.</i> , 459. <i>Cited.</i>	400
Missouri v. Illinois, 180 U. S. 208, 200 U. S. 496, 202 U. S. 598. <i>Cited.</i> ...	61
Missouri v. Nebraska, 196 U. S. 23. <i>Cited.</i>	63
Mitchell v. Harmony, 13 How. 115. <i>Cited.</i>	85
Molhuysen, P. C., <i>ed.</i> De Iure Belli ac Pacis Hugonis Grotii. <i>BR.</i>	692
Monroe Doctrine.	
———. And the Great War. A. B. Hall. <i>BR.</i>	696
———. Address of B. Brum. <i>Ed.</i>	601
———. And the League of Nations. P. M. Brown. <i>Ed.</i>	207

Monroe Doctrine. Non-recognition of, by European governments.....	23
———. Origin, meaning and international force of. C. Tower. <i>LA</i>	1
———. Reference to, in Treaty of Versailles, 1919, not recognition....	24
———. Text of declaration	15
Monroe, President. Correspondence with Jefferson preceding declaration of Monroe Doctrine	12
———. Attitude regarding power of recognition.....	526, 529
Moore, John Bassett. Pan-American Financial Conferences and the Inter- American High Commission. <i>LA</i>	343
———. On recognition of governments. <i>Cited</i>	516
National Civil Service Reform League. Report on the foreign service. <i>BR</i> .	480
Naturalization in Australia does not confer British citizenship. Mark- wald v. Attorney-General, 36 Times L. R. 197. <i>JD</i>	276
Nebraska v. Iowa, 143 U. S. 359. <i>Cited</i>	68
Netherlands treaties since 1813. <i>Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813</i> . W. J. M. van Eysinga. <i>BR</i>	290
Neutrality of Chile during the European War. B. Mathieu. <i>LA</i>	319
New Hampshire v. Louisiana (1883), 108 U. S. 76. <i>Cited</i>	62
New Jersey v. New York, 3 Peters 465, 5 Peters 284. <i>Cited</i>	65, 66
New Jersey—Virginia. Dispute under Articles of Confederation.....	53
New South Wales v. Commonwealth, 6 C. L. R. 214, 37 C. L. R. 179. <i>Cited</i>	50
New York v. Connecticut, 4 Dallas 1. <i>Cited</i>	66
Nielsen, Fred K. Solution of the Spitsbergen question. <i>Ed</i>	232
Noordam, The, 36 Times L. R. 581. <i>JD</i>	665
Oetjen v. Central Leather Co. <i>Cited</i>	513
Ogilvie, Paul Morgan, International waterways. <i>BR</i>	478
Ontario v. Canada, 8 Exch. Rep. 174; 10 E. R. 292. <i>Cited</i>	45
Orange Free State, recognition of, 1871.....	522
Oppenheim, L. On equality of states, <i>cited</i> , 545; in memoriam.....	229
Pacific blockade. <i>Le Blocus pacifique</i> . H. P. Falcke. <i>BR</i>	298
Pan-American Financial Conferences and the Inter-American High Commis- sion. J. B. Moore. <i>LA</i>	343
Pan-Americanism. Address of B. Brum. <i>Ed</i>	600
Paraguay, recognition of, 1852	522
Paris, The Declaration of, 1856. C. H. Stockton. <i>LA</i>	356
Peace. Joint resolution declaring war with Germany at an end. <i>Text</i> , 419. <i>Ed</i>	384
Peace Conference, Paris, 1919. Report of commission on responsibilities. Text with dissenting reports.....	95, 127, 151
Peace Conference, Some problems of the. Haskins and Lord. <i>BR</i>	679
Penn v. Lord Baltimore, 1 Vesey Sen. 444. <i>Cited</i>	41
Pennsylvania v. Connecticut. Dispute under Articles of Confederation...	54
Permanent court of international justice. D. J. Hill, <i>ed</i>	387
———. J. B. Scott, <i>ed</i>	581

Permanent court of international justice. Report of M. Bourgeois to Council of League of Nations. <i>Text</i>	622
Phillimore, Sir Robert. On equality of states, 542; on recognition of de facto governments	504
Poland, recognition of, 1919, 524; rights of minorities under treaty with. <i>Ed.</i>	392, 629
Porto Alexandre, The, 36 Times L. R. '66. <i>JD</i>	273
Postal correspondence, seizure of neutral securities in. The Noordam, 36 Times L. R. 581. <i>JD</i>	665
Potter, P. B., <i>rev.</i> Immunity of private property from capture at sea. H. S. Quigley.....	700
President of United States. Recognition of new states by. C. A. Berdahl. <i>LA</i>	520
Primacy of great Powers in Treaty of Versailles.....	556
Prisoners of war, repatriation of. Work of League of Nations.....	634
Privy Council. Settlement of disputes between colonies and dominions. R. G. Caldwell. <i>LA</i>	38
Prize law as affecting neutrals in World War. <i>Het prijsrecht tegenover neutralen in den wereldoorlog van 1914 en volgende jaren.</i> J. H. W. Verzijl. <i>BR</i>	291
Proceedings of American Society of International Law, charge for.....	383
Proton, The, 34 Times L. R. 309. <i>JD</i>	264
Public ship engaged in trade, liability to suit in rem for salvage. The Porto Alexandre, 36 Times L. R. 66. <i>JD</i>	273
Punishment of offenders against the laws of war. J. W. Garner. <i>LA</i>	70
———. Report to Paris Peace Conference of Commission on Responsibilities. Text with dissenting reports.....	95, 127, 151
Quebec v. Ontario, 1903 A. C. 39, 1910 A. C. 509. <i>Cited</i>	45
Quigley, H. S. Immunity of private property from capture at sea. <i>BR</i> ...	700
Ralston, Jackson H., <i>rev.</i> <i>Bolivia ante la Liga de las Naciones.</i> Brissot..	700
———. <i>Rev. Le Blocus pacifique</i> H. P. Falcke.....	298
Recognition of de facto governments. A. S. Hershey. <i>LA</i>	499
Recognition of states, The power of. C. A. Berdahl. <i>LA</i>	519
Recommendations of Habana concerning international organization. J. B Scott. <i>BR</i>	301
———. <i>Acte final de la session de la Havane.</i> <i>BR</i>	304
Red Cross organization, international. <i>Ed.</i>	210
Reeves, Jesse S., <i>rev.</i> The war with Mexico. J. H. Smith.....	293
Renault, L. On punishments for war crimes.....	71
Requisitioned enemy vessel engaged in trade. Liability to suit in rem for salvage. The Porto Alexandre, 36 Times L. R. 66 <i>JD</i>	273
Requisition of vessel seized in neutral territorial waters. The Dusseldorf, 36 Times L. R. 885. <i>JD</i>	672
Reservations to Treaty of Versailles, adopted by United States Senate. <i>Text</i>	199
Rhode Island v. Massachusetts, 12 Peters 657, 14 Peters 210. <i>Cited</i>	65, 66

Ricaud v. American Metal Co. <i>Cited</i>	512
Ripoll, Jaime Torrubiano. <i>Tr. Tratado de las Leyes y de Dios Legislador.</i> Francisco Suárez. <i>BR.</i>	307
Rocca v. Thompson, 223 U. S. 317. <i>Cited</i>	377
Root, Elihu. London address on Abraham Lincoln. <i>Ed.</i>	590
———. Notice regarding postponement of annual meeting of American Society of International Law	382
———. Selection as member of committee of jurists to plan Permanent Court of International Justice, <i>ed.</i> 390; Remarks of Mr. Balfour.....	626
Rougier, Dr. On recognition of de facto governments. <i>Cited</i>	503
Roumania, recognition of, 1878	523
Roxburgh, Ronald F. The sanction of international law. <i>LA</i>	26
Rubery, Alfred, pardon of, by President Lincoln.....	594
Russia, Commission of inquiry to. Work of League of Nations.....	632
Russian revolutionary government, recognition of, 1917.....	523
Saar Basin. Work of League of Nations	621
Salvador, recognition of, 1849.....	522
Salvage. Liability of public ship engaged in trade. The Porto Alexandre, 36 Times L. R. 66. <i>JD</i>	273
Samoa, recognition of, 1880	523
Sanction of international law. R. F. Roxburgh. <i>LA</i>	26
Sayre, Francis Bowes. Experiments in international administration. <i>BR.</i> ..	287
Scotia, The, 14 Wall. 170. <i>Cited</i>	550, 576
Scott, J. B. Address on equality of states at Hague Conference. <i>Cited</i>	540
———. A permanent court of international justice. <i>Ed.</i>	581
———. American solidarity. <i>Ed.</i>	598
———. Changes in the American Journal of International Law. <i>Ed.</i> ...	382
———. Dissent from report of Commission on Responsibilities. <i>Test</i> , 127. <i>Cited</i>	80
———. Heinrich Lammasch. <i>Ed.</i>	609
———. In memoriam—T. J. Lawrence	223
———. In memoriam—Robert Bacon	403
———. The Institute of International Law. <i>Ed.</i>	595
———. Judicial settlement of controversies between States of American Union. <i>BR.</i>	683
———. Recommendations of Habana concerning international organiza- tion. <i>BR.</i>	301
———. Hon. Elihu Root's London address on Abraham Lincoln. <i>Ed.</i> ..	590
———. Alpheus Henry Snow. <i>Ed.</i>	613
———. Two new journals of international law. <i>Ed.</i>	606
Securities, neutral, seized in mails. The Noordam, 36 Times L. R. 581. <i>JD.</i>	665
See, Chong Su. Foreign trade of China. <i>BR.</i>	286
Self-determination in Central Europe. <i>Ed.</i>	235
Sellers, Kathryn. Chronicle of international events.....	240
———. Periodical literature of international law.....	313

Senate, U. S. Report on power of recognition. <i>Cited</i>	516, 536
———. Treaty of peace with Germany in the. G. A. Finch. <i>LA</i>	155
Serb-Croat-Slovene State, recognition of, 1919.....	524
Settlement of inter-state disputes. R. G. Caldwell. <i>LA</i>	38
Seward, Secretary. Correspondence with France regarding intervention in Mexico, 21; negotiations concerning Declaration of Paris.....	364
Sherman, Gordon E., <i>rev.</i> Authority in the modern state. H. J. Laski.....	475
———. <i>Rev.</i> Studies in the problem of sovereignty. H. J. Laski.....	283
Slavery, sympathy in England for Northern cause during American Civil War	592
Smith, Justin H. The war with Mexico. <i>BR</i>	293
Snow, Alpheus Henry. In memoriam. <i>Ed</i>	613
South African Union, settlement of provincial disputes.....	44
South Australia v. Victoria, 12 C. L. R. 667; 18 C. L. R. 115. <i>Cited</i>	52
South Carolina v. Georgia. Dispute under Articles of Confederation.....	53
South Carolina v. Georgia, 93 U. S. 4. <i>Cited</i>	67
South Dakota v. North Carolina (1904); 192 U. S. 286. <i>Cited</i>	62
Sovereigns. Immunity from jurisdiction of foreign courts, 92, 116, 129, 135, 147, 151	
Sovereignty, Studies in the problem of. H. J. Laski. <i>BR</i>	283
Spanish-American states. Recognition of.....	507, 525
Spitzbergen question, Solution of the. F. K. Nielsen. <i>Ed</i>	232
Statistica, international. Work of League of Nations.....	637
Stockton, Charles H. The Declaration of Paris, 1856. <i>LA</i>	356
Strupp, Charles. <i>La situation internationale de la Grèce (1821-1917)</i> . <i>BR</i>	486
Suárez, Francisco. <i>Tratado de las Leyes y de Dios Legislador</i> . <i>BR</i>	307
Suárez, José León. <i>Diplomacia Universitaria Americana</i> . <i>BR</i>	697
Superior orders as justification for war crimes. J. W. Garner. <i>LA</i>	82
Supreme Court of United States. Cases in suits between States. R. G. Caldwell, <i>LA</i>	58
———. Judicial settlement of controversies between States of American Union. J. B. Scott. <i>BR</i>	683
Switzerland, admission to League of Nations.....	629
Tachi, S. Reservations to report of Commission on Responsibilities. <i>Text</i> ..	151
Tasmania v. Commonwealth (1904). 1 C. L. R. 329. <i>Cited</i>	49
Territorial waters of neutral, belligerent capture in. The Dusseldorf, 36 Times L. R. 885. <i>JD</i>	672
Texas, recognition of	521, 531
Thalweg. Arkansas v. Mississippi, 250 U. S. 39. <i>JD</i>	260
Thorington v. Smith and Hartley, 8 Wallace, 1. <i>Cited</i>	509
Tower, Charlemagne. Origin, meaning and international force of Monroe Doctrine. <i>LA</i>	1
———. <i>Rev.</i> Present problems in foreign policy. D. J. Hill.....	464
Transitu, sale in, of securities. The Noordam, 36 Times L. R. 581. <i>JD</i> ..	665
<i>Tratado de las Leyes y de Dios Legislador</i> . Francisco Suárez. <i>BR</i>	307

Treaties, Netherlands, since 1813. <i>Ontwikkeling en inhoud der Nederlandsche tractaten sedert 1813</i> . W. J. M. van Eysinga. <i>BR</i>	290
Treaties, registration and publication of. Work of League of Nations....	639
Treaty-making power, Extension of Congressional jurisdiction by. <i>Ed</i>	400
———. <i>Missouri v. Holland</i> . <i>JD</i>	459
Tryon, James L., <i>rev.</i> Experiments in international administration. F. B. Sayre	287
———. <i>Rev.</i> Recommendations of Habana concerning international organization. J. B. Scott.....	301
———. <i>Rev.</i> <i>Acte final de la session de la Havane</i>	304
Turkey. Responsibility in the World War. Report of Peace Conference Commission. <i>Text</i>	104
Turkish minorities treaty. Work of League of Nations.....	634
Twee Gebroeders, 3 C. Rob. 162. <i>Cited</i>	675
Twiss, Sir Travers. On equality of states. <i>Cited</i>	542
Understandings of international law. Q. Wright. <i>LA</i>	565
United States. Doctrine and practice as regards recognition. <i>Cited</i>	518
———. Joint resolution declaring the war at an end. <i>Text</i> , 419; <i>ed</i>	384
———. Memorandum of reservations to report of commission on responsibilities. <i>Text</i>	127
———. Negotiations with European Powers concerning Declaration of Paris	362, 364
United States <i>v.</i> Hudson, 7 Cranch 32. <i>Cited</i>	146
United States <i>v.</i> Hutchings, 2 Wheeler's Crim. Cas. 543. <i>Cited</i>	538
United States <i>v.</i> Michigan, 190 U. S. 196. <i>Cited</i>	59
United States <i>v.</i> North Carolina, 136 U. S. 211. <i>Cited</i>	59
United States <i>v.</i> Palmer, 3 Wheat. 610. <i>Cited</i>	538
United States <i>v.</i> Texas, 143 U. S. 621. <i>Cited</i>	59
United States <i>v.</i> Thompson, 258 Fed. Rep. 257. <i>Cited</i>	377
United States <i>v.</i> Yale Todd, 13 How. 52. <i>Cited</i>	64
Uruguay. Decree regarding belligerent American nations during World War. June 18, 1917. <i>Text</i>	604
Vattel, on equality of states. <i>Cited</i>	541
Vermont disputes under Articles of Confederation.....	53
Versailles, Treaty of, 1919. Equality of states in the. S. W. Armstrong <i>LA</i>	540
———. In the United States Senate. G. A. Finch. <i>LA</i>	155
———. Punishment of offenders against the laws and customs of war. J. W. Garner. <i>LA</i>	70
———. Report of Commission on Responsibilities. Text with dissenting reports	95, 127, 151
Violation of neutral territorial waters. The Dusseldorf, 36 Times L. R. 885. <i>JD</i>	672

Virginia-North Carolina. Colonial dispute before Privy Council.....	40
Virginia-Pennsylvania. Dispute under Articles of Confederation.....	53
Virginia v. Tennessee, 148 U. S. 503. <i>Cited</i>	67
Virginia v. West Virginia, 11 Wall. 39. <i>Cited</i>	67
Virginia v. West Virginia (1906-1918), 206 U. S. 290, 209 U. S. 514, 220 U. S. 1, 222 U. S. 17, 231 U. S. 89, 234 U. S. 117, 238 U. S. 202, 241 U. S. 531, 246 U. S. 565. <i>Cited</i>	62
Vrow Anna Catharina, 5 C. Rob. 15. <i>Cited</i>	675
Walston, Sir Charles. English-speaking brotherhood and the League of Nations. <i>BR</i>	693
War crimes, Jurisdiction of local courts to try enemy persons for. <i>Ed</i>	218
———. Punishment of offenders. J. W. Garner. <i>LA</i>	70
———. Report of Commission on Responsibilities. Text with dissent- ing reports	95, 127, 151
War with Mexico, The. J. H. Smith. <i>BR</i>	293
War zone. Chilean protest against German decree of Jan. 31, 1917. <i>Cited</i> ..	331
Washington, George. Quotation from Farewell Address regarding political relations with Europe	3
Washington v. Oregon, 211 U. S. 127. <i>Cited</i>	68
Webster, Daniel. Statement regarding Monroe Doctrine, 1826.....	17, 24
West Rand Central Gold Mining Co. v. Rex, L. R. (1905), 2 K. B. 391. <i>Cited</i>	576
Westlake, J. On equality of states. <i>Cited</i>	545
Wheaton, Henry. On equality of states. <i>Cited</i>	543
Wiesse, Charles. On recognition of de facto governments. <i>Cited</i>	500
William II. German emperor. Punishment for crimes committed during World War, 88; responsibility as author of World War, 89; report of commission to Paris Peace Conference, 95; dissenting reports.....	127, 151
Williams v. Bruffy, 96 U. S. 176. <i>Cited</i>	510
Williams v. Suffolk Ins. Co., 13 Pet. 415. <i>Cited</i>	538
Willoughby, W. W. On power of recognition. <i>Cited</i>	539
———. <i>Rev.</i> Foreign trade of China. Chong Su See.....	286
———. <i>Rev.</i> Judicial settlement of controversies between States of the American Union. J. B. Scott	683
Wilson, Woodrow. Congressional Government, <i>cited</i> , 574, 579; Constitu- tional Government in United States, <i>cited</i>	573, 579
Wilson, President. Statement to Senate Committee on Foreign Relations regarding Covenant of League of Nations, Aug. 19, 1919.....	101
Women and children, traffic in. Work of League of Nations.....	635
Woolsey, Theodore S. Rights of minorities under treaty with Poland. <i>Ed</i> .	396
World War. <i>Mein Kriegs-Tagebuch</i> . A. H. Fried. <i>BR</i>	299
———. Neutrality of Chile during. B. Mathieu. <i>LA</i>	319
———. Prize law as affecting neutrals in the. <i>Het prijsrecht tegenover neutrals in den wereldoorlog van 1914 en volgende jaren</i> . J. H. W. Verzijl. <i>BR</i>	291

World War. Responsibility of authors of. J. W. Garner, <i>LA</i>	89
———. Report of Commission to Paris Conference with dissenting reports	95, 127, 151
Wright, Herbert F., rev. <i>Tratado de las Leyes y de Dios Legislador</i> . Francisco Suárez	307
Wright, Quincy. The understandings of international law. <i>LA</i>	565

